An analysis of *maṣlaḥah* based resolutions issued by Bank Negara Malaysia

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**Abstract**

**Purpose** – This study aims to examine the resolutions issued by the Sharīʿah Advisory Council of Bank Negara Malaysia (SAC-BNM), which have recognized *maṣlaḥah* (public interest) as the basis of ruling to see the extent of its usefulness to the public and the extent of its adherence to the *Maṣlaḥah* parameters. The study will also look into the opposing opinion to identify the basis of rejection and overall implication on Islamic finance based on opposing opinions of SAC-BNM and other bodies of collective *ijtihād* (juristic interpretation).

**Design/methodology/approach** – The study uses a qualitative approach by analyzing the SAC-BNM resolutions, which have been resolved based on *Maṣlaḥah*. The study also applies the comparative approach by comparing the fatwa (Sharīʿah pronouncement) issuing bodies of Malaysia and the Gulf Cooperation Council countries. Furthermore, the secondary data is obtained from sources such as *usul al-fiqh* (theory of Islamic jurisprudence) books, papers and relevant internet sources.

**Findings** – The study found that SAC-BNM’s resolutions are in line with some of the major *Maṣlaḥah* parameters mentioned in the *usul al-fiqh* sources i.e. must not contradict with the Qurʾān and the Sunnah. While looking at the other two criteria of being in line with consensus (ijmāʿ) (consensus) and having a general impact, such resolutions might not fulfill the criteria of valid *Maṣlaḥah* considering, respectively, the stand of collective *ijtihād* or the impact on the group of customers and institutions.

**Originality/value** – Most available shariʿah (Islamic law) research considers the perspective of *fiqh* (Islamic jurisprudence) while analyzing the issue of *Maṣlaḥah*. This study aims to conduct analysis based on *usul al-fiqh*. Moreover, *Maṣlaḥah* itself is a broad concept, which can be abused. Hence, this study discusses the parameters of *Maṣlaḥah* to understand the validity of an important juristic tool in Sharīʿah.

**Keywords**  
*Maṣlaḥah* parameters, Theory of Islamic jurisprudence, SAC-BNM’s resolutions

**Paper type**  
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1. Introduction

Islamic finance is an active financial market when it comes to developing new products and bringing innovation to the finance industry. Sharīʿah (Islamic law) scholars are required to practice *ijtihād* (juristic interpretation) to satisfy the Sharīʿah rule with sound reasoning to
ensure the products are Shari’ah-compliant. These bases could be evidence derived from the Qur'an, Sunnah or ijma’ (consensus) of the scholars on the same matters. Conversely, the matter may not be found in the mentioned sources, thus, the scholars are required to look at the less referred sources of Shari’ah such as maslahah (public interest), ‘urf (custom) and others (Ishak, 2019).

Maslahah is one of the important sources of Shari’ah, which needs continuous research since each period of time has its own masalah (plural of maslahah), which might differ from time to time. Muslims believe that Shari’ah is a vital assistant to achieve the maslahah of Muslim society by recognizing whatever is beneficial and preventing whatever is harmful. Ibn Taymiyyah (1987) observed that the Shari’ah will never ignore whatever has benefit (maslahah) for us and Allah (SWT) has completed the religion for us. Maslahah as a Shari’ah source is considered flexible, which means that it can be abused if it is used inappropriately. Therefore, the parameters of maslahah are important to frame its use. The parameters of applying maslahah have been thoroughly discussed by Shari’ah scholars, and there are a number of references in this regard, as it is an important part of the maslahah system. Following and considering the parameters of maslahah will ensure that Shari’ah scholars are not using maslahah as a Shari’ah basis in an inappropriate manner.

In the context of Islamic finance, as the issues of Islamic finance are quite complicated and some of them cannot be directly taken from classical works of jurisprudence, maslahah has become one of the main approaches in dealing with those modern issues. This concept, which reflects the idea of achieving public interest and averting harm, has played a significant role both in establishing rules and in developing products (Ishak, 2019). To this end, it is highlighted that the Shari’ah Advisory Council of Bank Negara Malaysia (SAC-BNM) has relied on maslahah in some of its resolutions. However, there might be concerns regarding the non-methodological use of maslahah by the Shari’ah committees of Islamic financial institutions (IFIs) to validate certain Islamic financial products and services that maximize profits by compromising Shari’ah principles. Therefore, a thorough examination on the maslahah-based resolutions is important to better understand the level of compliance with maslahah parameters.

This study will thus highlight the SAC-BNM’s resolutions based on maslahah. It aims to first study the stand taken by bodies of collective ijtihād (juristic interpretation) with regard to the resolutions of SAC-BNM where parameters of maslahah were considered, and second, to highlight the maslahah parameters to understand the recognized parameters. After that, the maslahah-based resolutions will be examined through these parameters to determine the level of compliance.

In relation to the context explained above, this study aims to fill the research gap in this issue as there are no specific studies that have considered specific fatwas (Shari’ah pronouncements) or resolutions of a specific fatwa board/committee and systematically examined them. There are some studies that have been conducted on the methodology of fatwa and the requirements of a mufti (the legal expert empowered to give legal rulings), but there is no study of the existing fatwas and their implications.

This study is divided into seven sections. After the introduction, Section 2 provides an overview of maslahah including its parameters. Section 3 gives an overview of SAC-BNM and its Shari’ah resolutions, while Section 4 briefly discusses previous studies on the application of maslahah. Section 5 provides the methodology of the study. Section 6 provides the discussion and analysis of the selected resolutions of SAC-BNM. Section 7 provides the conclusions of the study.
2. Maslahah

According to Ibn Manzûr (1999) in *Lišān al-ʿArab*, *mašlahah* is the opposite of *mafsadah* (harm), it means to repair what has been ruined. Islamic jurists have discussed the concept of *mašlahah* extensively. Imam al-Ghazâlî (1993) defines *mašlahah* as the considerations, which secure benefit and prevent harm and are harmonious with the objectives of the Sharîʿah. The objectives of Sharîʿah, as highlighted by Imam al-Ghazâlî are protecting the five essentials, which are religion, life, intellect, lineage and property. According to Imam al-Ghazâlî, any measures that secure these values fall within the scope of *mašlahah* and anything, which violates them is defined as *mafsadah*. Al-Bughâ (1999) also stated a similar opinion that *mašlahah* has the same meaning as benefit and interest, which the Sharîʿah strives to achieve for humans by way of protecting the five basic values. The International Islamic Fiqh Academy defined *mašlahah* in its Resolution No. 141 (7/15) precisely similar to what has been given by Imam al-Ghazâlî.

According to Al-Buṭṭî (1973), Sharîʿah sources have validated *mašlahah*; its evidence can be found in the Qurʾān and the Sunnah. In Qurʾān (21:107), Allah (SWT) says, “It was only as a mercy that we sent you to all people.” In this verse, Allah (SWT) addresses Prophet Muhammad (PBUH) that he (PBUH) is a blessing and mercy to the world, as he (PBUH) was responsible for guiding people and rescuing them from disbelief (Al-Buṭṭî, 1973). Al-Tirmidhî narrated in his *Sunan, Ḥadîth* no. 1327, the conversation between Prophet Muhammad (PBUH) and his companion Muʿādh before sending him to Yemen. Prophet Muhammad (PBUH) questioned Muʿādh as to how he would take a juristic decision when a matter came to him. Muʿādh replied that he would take a decision based on what is mentioned, firstly, in the Qurʾān, and then based on the Sunnah, if it is not found in the Qurʾān, and then the last resort is *ijtihād*, which would include his point of view along with relying on the sources of Sharîʿah such as *mašlahah*. *Mašlahah* has been applied, as the era of Prophet Muhammad’s (PBUH) companions. For instance, during the time of Abū Bakr’s caliphate, ‘Umar ibn al-Khaṭṭāb requested from Abū Bakr to compile the Qurʾān in a written format to preserve it from loss, and Abū Bakr permitted this act when he observed that it is in the interest of the Muslims (Kamāli, 2000).

2.1 Classification of *mašlahah*

Ibn ʿĀshūr (2006) in his comprehensive book pertaining to *maqāṣid al-Sharīʿah* also studied *mašlahah* and *mafsadah* extensively. He classified *mašlahah* into two groups as follows: direct *mašlahah* to individuals such as having food to survive and indirect *mašlahah* such as guard duty at night to protect society. The latter is called general *mašlahah*, as it benefits the whole society. He also classified *mašlahah* into *mašlahah darūriyyah* (*mašlahah* for essentials), which consists of the preservation of the five objectives, namely, protection of religion, life, mind, lineage and property. *Mašlahah ḥājiyyah* (*mašlahah* for complementarities), which is below the *darūriyyah* level, is like the supplementary actions, which must be taken to protect the *darūriyyah*. The last type is *mašlahah tahṣīniyyah* (*mašlahah* for embellishments), which completes the life of a Muslim.

From another angle, scholars have classified *mašlahah* into three categories as follows. The first category is *mašlahah mu tabarah* (accredited *mašlahah*). This type of *mašlahah* is validated by primary Sharīʿah sources, namely, the Qurʾān, Sunnah, *ijmāʿ* and *qiyyâs* (analogy) (Al-Bughâ, 1999). For instance, in the protection of life, the Sharīʿah has adopted punishments such as *qiṣâṣ* (retribution) to protect the life of humans (Al-Zuhailî, 2006). Allah (SWT) has mentioned clearly that “...fair retribution saves life for you” (Qurʾān 2:179). According to al-Bughâ (1999), *mašlahah mu tabarah* could be through *qiyyâs*; for example, the Qurʾān (62:9) states that it is obligatory to suspend selling after the call for Friday prayers. Likewise, any transaction that interferes with the remembrance of Allah (SWT) and
prayers, such as leasing, pledging collateral or any other transaction, would have the same ruling of prohibition. This is an example of *maslahah mu’ tabarah* based on *qiyas*. This type of *maslahah* must be upheld and cannot be rejected because there is clear evidence supporting it.

Invalid *maslahah* (*maslahah mulghah*) is the second type of *maslahah*. It is what the Sharī’ah has clearly invalidated in its primary sources (Al-Zuhaïlî, 2006). For instance, the practice of usury in transactions is clearly forbidden in the Qur’ān. Allah (SWT) says “Allah has permitted trade and has forbidden interest” (Qur’ān 2:275). Charging interest is a *maslahah* for the lender in that he gets more money, yet the Sharī’ah has not recognized this *maslahah* and has prohibited its occurrence (Al-Zuhaïlî, 2006). In another example, an argument that trade in alcohol enhances economic development is not acceptable. In fact, the Sharī’ah recognizes the absolute prohibition provided by the text of the Qur’ān (Al-Zuhaïlî, 2006). For instance, the compilation of the Qur’ān achieved a real *maslahah* for Muslims because it protected it from distortion and loss. This *maslahah* has not been mentioned in the Qur’ān and Sunnah; thus it is called *maslahah mursalah*.

According to Al-Zuhaïlî (2006), scholars are divided into two groups in terms of recognizing *maslahah mursalah* as a source of Sharī’ah. The first group is al-Shafi’ī and the Zahirīs. According to them, *maslahah mursalah* is not a source of law, and the Sharī’ah only recognizes *maslahah* that is mentioned in the Qur’ān, Sunnah or *ijma* (consensus). The second group consists of scholars from the Ḥanafi, Malikī and Ḥanbalī Schools of jurisprudence. According to them, *maslahah mursalah* should be recognized as a source of law in Islam, as it can be relied upon for the emerging issues, which are not mentioned in the Qur’ān and the Sunnah (Al-Zuhaïlî, 2006).

2.2 Parameters of *maslahah*

According to Al-Baṭṭî (1973), parameters of *maslahah* are important for a mujtahid (an Islamic jurist who can arrive at rulings) to identify, analyze and understand the appropriate cases, which can be permitted based on *maslahah*. A mujtahid must consider all these parameters of *maslahah* before delivering his point of view.

Al-Baṭṭî (1973) divided the parameters of *maslahah* into five types. He began by stressing that any *maslahah* must be in line with the objectives of the Sharī’ah. Thus, any matter that protects the five objectives of the Sharī’ah would be called *maslahah*, while whatever impairs these objectives would be called *maṣṣadah*. The first objective, which is religion, is bounded in *aqīdah* (belief) and *ʿibādah* (worship). Activities, which lead to strengthening the faith and which raise the practice of *ʿibādah* could be referred to as *maslahah*; for example, daily prayers, fasting and *ṣadaqah* (charity) (Al-Ghazālī, 1993).

Al-Baṭṭî (1973) further stated that *maslahah* must not contradict with the Qur’ān and the Sunnah as the second and third parameters of *maslahah*. The Qur’ān, Sunnah, and the consensus of the companions of Prophet Muhammad (PBUH) and Muslim scholars are the primary sources of Sharī’ah (Ayub, 2007). A valid *maslahah* must be in line with what is
mentioned in the Qurʾān and the Sunnah, as both sources seek to achieve *maslahah* for the Muslims (Kamaruddin et al., 2015). A mujtahid can also give his point of view based on *maslahah* if both sources (Qurʾān and Sunnah) are silent on the underlying issue (Abdul Rahim, 2004). For instance, in some Muslim countries, *hijab* (head covering) was opposed based on the argument that observing *hijab* will not have a positive effect on tourists visiting the country (Al-Khateeb, 2013). This type of *maslahah* is rejected from the Sharīʿah perspective, as *hijab* has a reference in the Qurʾān, when Allah says:

> And enjoin believing women to cast down their looks, and guard their private parts, and not reveal their adornment except that which is revealed of itself, and to draw their veils over their bosoms (Qurʾān, 24:31).

Another example is the case of the Tunisian Government’s decision in 1960 to ban fasting in Ramaḍān, arguing that it would negatively impact economic productivity (Salih, 2013). Again, this decision directly conflicts with the primary sources of Sharīʿah; for example, the *ḥadīth*:

> Islam is built on five pillars: bearing witness that there is no God except Allah and that Muhammad is the Messenger of Allah, establishing prayer, paying zakat, pilgrimage, and fasting in Ramaḍān (Al-Bukhārī, 1981).

Therefore, the argument that the fast must be broken in Ramaḍān to protect the economy is an invalid *maslahah* from the Sharīʿah point of view, as breaking the fast during the day of Ramaḍān with no valid reason (as considered by Islam) is against the Sharīʿah.

The fourth parameter of *maslahah* according to Al-Buṭṭā (1973) is that *maslahah* must not contradict *qiyyās*. Finally, it should not contradict another *maslahah* of the same strength or a higher level. According to Al-Zuhailī (2006), *maslahah* must not contradict *ijmāʿ*. *Ijmāʿ* means the unanimous agreement of the *mujtahīdīn* (plural of *mujtahīd*) of the Muslims’ community of any period following the demise of Prophet Muhammad (PBUH) on any Sharīʿah matter (Al-Zuhailī, 2006). *Ijmāʿ* is considered a source of law, as all jurisprudential schools have accepted it. *Ijmāʿ* could be based on *maslahah*; thus, the *mujtahīdīn* can consider the *maslahah* of the Muslim society before delivering any fatwas. However, any new fatwas based on *maslahah* must not contradict the former fatwas, as the former fatwas have considered the *maslahah* (Abdul Ghani et al., 2011). For instance, there is an existing *ijmāʿ* among scholars on the prohibition of lard, which was based on analogy, as pork is prohibited in Sharīʿah (Islamweb, 2002). Thus, scholars considered lard as pork. Hypothetically, if all scholars agreed to allow selling lard based on the *maslahah* of benefiting the economy, such an *ijmāʿ* would contradict the former *ijmāʿ*; therefore, it would be void.

Kamālī (2000) provided two other parameters, which are also stated by Al-Zuhailī (2006). Kamālī (2000) stated that *maslahah* must be *ḥaqiqiyah* (genuine). The activity allowed on the basis of *maslahah* must have real benefits to society. For instance, the family law of a country that requires every marriage contract to be registered in the court of law is an example of something that benefits society (Medium, 2015). Similarly, observing traffic laws (such as stopping at red lights or fastening seatbelts) will result in protecting the lives of the drivers and passengers from accidents or their effects.

Also, Kamālī (2000) stated that *maslahah* must be *kuliyah* (general). The Sharīʿah allows an activity to be legitimized based on *maslahah* if that activity secures benefits or prevents harms to all people. It means that a *maslahah*, which only benefits a limited number of people is not acceptable (Kamālī, 2000). For instance, determining the minimum age of marriage benefits all people (Odala, 2013); thus it can be called *maslahah kuliyah*.
However, not all scholars agree to this parameter; they argue that the Sharī'ah has recognized some *maṣlahah* that affect a very large number of people although they may not affect all the people (Maḥmūd, 2009).

3. Sharī'ah Advisory Council of Bank Negara Malaysia and its Sharī'ah resolutions in Islamic finance

In May 1997, Bank Negara Malaysia established the highest Sharī'ah authority for Islamic financial matters, called the Sharī'ah Advisory Council (SAC). The role of the SAC is to supervise and advise on Sharī'ah matters of those businesses that are based on Sharī'ah principles. The SAC is also responsible for validating all Islamic banking and *takaful* (Islamic insurance) products to ensure their compliance with Sharī'ah principles. The SAC consists of members who are qualified with enormous experience particularly in the areas of Islamic banking and finance (SAC-BNM, 2010).

SAC-BNM has compiled its resolutions issued since its establishment in 1997 up until 2009. It has published two editions of the book so far; the first was published in 2007 and the second in 2010. These publications are considered as references for Sharī'ah rulings related to Islamic finance. They focus on matters related to Islamic banking and *takaful* (SAC-BNM, 2010).

4. Literature review: studies on the application of *maṣlahah*

There is an enormous number of references on the issues of *maṣlahah*, including those that studied applications of it. Hassan (1998) in his book, *Nuzariyat al-Maslahah fi al-Fiqh al-Islāmi*, studied the theory of *maṣlahah* in each madhhab (schools of fiqh) separately. One of the books that examined the application of *maṣlahah* is *Al-Maslahah al-Mursalah wa dawruhā fi al-Qaḍayā al-Tibbiyyah al-Muʾāṣirah*, by Al-Samadi (2008). He studied the role of *maṣlahah* in organ transplantation for humans, medical check-up before marriage, autopsy after death and other cases. Maḥmūd (2009) in his book *Al-Maslahah al-Mursalah wa Tatbīqatuhā al-Muʾāṣirah fi al-Ḥukum wa al-Nuẓum al-Siyāsyyah* studied the role of *maṣlahah* in political applications such as the selection of a president for a state, voting and consultative assembly. He studied the relationship between those applications and *maṣlahah*. Al-Ṣāliḥ (2000), in his paper *al-Maslahah al-Mursalah wa Tatbīqatuhā al-Muʾāṣirah*, studied some *maṣlahah* applications such as providing a law, which may protect workers from unfair dismissal and determining minimum wage rates and daily working hours.

Regarding financial matters based on *maṣlahah*, Zain (1428H) in his book titled *Al-Istīdlāl bi al-Maslahah al-Mursalah fi al-Qaḍayā al-Māliyyah al-Muʾāṣirah* studied a number of applications, such as financial penalties, zakat on fiat money, *ribā* in fiat money, benchmarking the market, mutual insurance and establishing an Islamic stock exchange. He focused on the benefits of these applications to the public. Yousuf (2012) conducted a study titled “Dawabiṭ al-ʿAmal bi al-Maslahah al-Mursalah ‘inda al-Uṣūliyyan bi al-Tatbīq ‘alā ʿalam al-Maṣrif al-Islāmi li Wādāʾ ‘Istithmār al-Mudārabah.” He studied the guarantee, which Islamic banks bear to be in line with conventional banks; he investigated if there is a real *maṣlahah* in this application. He concluded that there is no *maṣlahah* in such application and that it is unfair for the bank to guarantee the capital of *mudārabah* transactions. Ishak (2019) conducted a study where he analyzed the argument of *maṣlahah* on the issues of *bayʿ al-ʾinah* (sell-and-buy-back contract), *taʿ wīd* (late payment charges) and *iḥrāʿ* (rebate) in the banking sector of Malaysia. He tried to harmonize between the Sharī'ah and reality by applying the role of *maṣlahah* in solving the current debatable issues among scholars of Islamic finance. He concluded that the Central Bank of Malaysia considers the *maṣlahah* principle for both Islamic banks and their customers by implementing the contracts and principles of Islamic banking. Yusoff and Oseni (2019)
conducted a study on standardization of legal documentation in Islamic home financing in Malaysia. They concluded that the standardization of legal documentation is not a requirement of the positive law but functionality of *maslahah* whereby the diverse interests of all parties to the contract are proactively protected. Hassan *et al.* (2019) mentioned in their study regarding cryptocurrency that there is real *maslahah* in having currency issued by the government, as it will ensure its stability, which will enable it to serve its purpose for the community. The SAC of Securities Commission Malaysia (SAC-SC, 2018) referred to *maslahah* when they allowed investment in companies whose activities are a mix of the permissible and impermissible. Arshad *et al.* (2018) in proposing the performance model of waqf institutions pointed out that the *maqāṣid* of waqf (ultimate aims of waqf establishment) should cover the *masāliḥ* of protecting religion, life, intellect, property and posterity. The execution of any waqf activities must be in accordance with the priority of *darāriyyat* (essentials), *ḥājīyyat* (complementarities) and *tahsīnīyyat* (embellishments).

Moreover, there is number of studies on the practice of fatwa in IFIs. Al-Khulaiﬁ (2005) compares theory and practice in the decisions of IFIs’ Shari’ah committees, Billah (2019) reviews fatwas on investing in different asset classes and Hassan *et al.* (2019) study fatwas on cryptocurrency as a medium of payment. Oseni (2017) examines the phenomenon of fatwa shopping, its effect on consumer trust in Islamic finance products, and the need for effective consumer protection regulations in the Islamic finance industry. Hassan *et al.* (2019) discuss how fatwa shopping has acted as one of the hindering factors affecting the Islamic finance industry. The reason is that managers of IFIs move around between various *fiqh* schools to suit their investment needs. They conclude that there is a need to harmonize Shari’ah standards to support the regulators to achieve unified guidelines for Islamic financial transactions. Izal *et al.* (2015) have studied the Islamic concept of fatwa, the practice of fatwa in Malaysia and Pakistan, and the relevance of the Malaysian fatwa model to Pakistan’s legal system. They suggest the need to take Malaysian fatwa as a model to provide legal status and grant the judiciary the power to implement Islamic verdicts in Pakistan.

5. Methodology of the study
The study relies on qualitative research tools and techniques, concentrating on an objective assessment of opinions and attitudes. Qualitative research methods are widely used to assess and examine opinions, particularly in research areas, which use selected case studies and involve analysis of those selected cases. The cases highlighted in this research are a group of fatwas that are issued by reputable fatwa-issuing bodies. The study uses the inductive approach, as it allows summarization of the collected data (Azungah, 2018). The inductive approach also assists in coming up with a general perception of *maslahah* and its parameters as one of the secondary sources of Shari’ah for Islamic financial transactions.

Moreover, the study uses a comparative-analytical approach to examine the opinions of different fatwa-issuing bodies. To this end, this study relies on document analysis, which is based on data selection rather than data collection (Bowen, 2009). Sommerhoff *et al.* (2018) in fact recommend document analysis for qualitative studies because of its several advantages over the data collection method such as questionnaires. Mahmud (2009) in his study titled *Al-Maslahah al-Mursalah wa Tatbiqatuhā al-Mu‘āṣarah fī al-Hukum wa al-Nuzum al-Siyāsiyyah* adopted the same approach to display scholars’ opinions and conducted his study based on it.

This study will firstly search the *usūl al-fiqh* literature in terms of matters related to fatwa in Islamic banking and finance along with *maslahah* as a source of Shari’ah rulings. Secondly, selected sample cases that have used *maslahah* as a basis of the fatwas issued by
the SAC-BNM are considered; concurrently, what other fatwa-issuing bodies have said on the same matters will be examined. The selected fatwa-issuing bodies in this study comprise the Islamic Fiqh Academy, the Accounting and Auditing Organization for Islamic Financial institutions (AAOIFI), Kuwait Finance House (KFH), Dubai Islamic Bank (DIB) and Dallah al-Barakah Bank (DBB). They are chosen because they are considered among the most important and official bodies issuing fatwas for IFIs worldwide. In this regard, Laldin et al. (2012) in their comparative study on fatwas in Islamic banking between Malaysia and the Gulf Cooperation Council countries and Fakhrunnas (2018) in his study on fatwas on Islamic law of transactions and their role in the Islamic finance ecosystem have chosen those fatwa-issuing bodies in their studies.

Accordingly, the study uses two samples as follows: the first comprises the usūl al-fiqh literature. It is referred to understand in depth the definition of maslahah, its conditions and parameters and the role of recognized maslahah in issuing fatwas on Islamic financial transactions. In addition, usūl al-fiqh literature is used to identify the usage of maslahah in constructing fatwas between past and present financial environments. The second sample comprises the official documents of SAC-BNM and the other selected fatwa-issuing bodies. Through these two samples, this study can draw a clear picture of these fatwas from the Sharī‘ah-compliance perspective, i.e. whether a specific fatwa is compliant with all parameters or conflicts with some of them.

6. Discussion and analysis of selected resolutions
The discussion on resolutions will be assembled into two sub-sections as follows: firstly, resolutions related to issuing a guarantee based on maslahah, and secondly, resolutions related to ēbra` (rebate), refinancing and rescheduling in Islamic financing agreements based on maslahah.

6.1 Resolutions related to issuing a guarantee based on maslahah
In its 91st meeting, on October 2009, the SAC-BNM resolved the issue of a third-party guarantee of capital and/or profit in muḍāraḥah transactions. The SAC-BNM has allowed this transaction on the condition that the third party must be an independent party. The transaction is allowed based on maslahah, as it is important to provide confidence to investors and attract them to invest in the country’s projects based on Islamic financial principles (SAC-BNM, 2010).

According to Mish’al (2012), a third-party guarantee is allowed in two cases as follows. Firstly, it is allowed in the case where it is based on kafalah (guarantee) with recourse. In such a scenario, the guarantor gives a guarantee to the rabb al-māl (capital provider) to protect him in case there was negligence from the muḍāriḥ (entrepreneur). In this regard, the Sharī‘ah requires an Islamic bank to guarantee deposits deposited in the bank by allowing the deposits to be guaranteed by a third party, such as a deposit insurer (Mustafa and Najeeb, 2018). The second case is if the guarantee is tabarru’ (a donation) from the third party, which gives the guarantee amount as a hibah (gift) (Mish’al, 2012). The principle of tabarru’ is used to require each Islamic bank to contribute a certain amount to the takāfūl fund, whereas the principle of cooperation is applied to financially assist any member institution when it fails to fulfill its financial obligations towards its insured depositors (Mustafa and Najeeb, 2018). Islamic Fiqh Academy (Majma‘ al-Fiqh al-Islāmī al-Duwālī) (2000) in its Resolution No. 30 (5/4) stated that there is nothing in Sharī‘ah preventing the inclusion of a statement in the prospectus or the muḍāraḥah certificates about a promise made by a third party, totally unrelated to the two parties of the contract in terms of legal personality or financial status, to donate a specific amount without any counter benefit to
meet losses in a given project. The SAC-BNM also issued a resolution, which implies that the third party should be an independent party. Overall, if the guarantee does not involve a fee, there are no Shari’ah issues, and there is no issue with the use of maslahah as evidence.

The SAC-BNM addressed the matter of extending the guarantee against a fee in a resolution titled “Shari’ah concept for the operation of Islamic guarantee facility by Credit Guarantee Corporation (CGC).” CGC is an Islamic credit guarantee, which is a type of facility that helps borrowers to obtain financing from IFIs. It is a fee-based guarantee where the applicant for the guarantee is charged a fee. On 27 October 2005, SAC-BNM in its 54th meeting resolved that the facility offered by the CGC is a fee-based guarantee, which is allowed based on maslahah because it achieves a real maslahah for borrowers, as it is hard to get a guarantee, in current financial markets, against no fee (SAC-BNM, 2010).

A fee in the guarantee should as per Islamic resolutions, not exceed the actual expenses. The Islamic Fiqh Academy in its Resolution No. 12 (12/2) stated that kafalah (guarantee) is a benevolent contract, motivated by grace and mercy. The jurists have decided against taking fee for issuing guarantees, the reason being that in the event of the guarantor’s payment of the guaranteed sum, it will resemble a loan with guaranteed profit to the lender, which is forbidden in Shari’ah. Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) (2017) Shari’ah Standard No. 5, clause 3/1/5, states that it is not permissible to take any remuneration whatsoever when providing a personal guarantee per se or to pay commission for obtaining such a guarantee. The guarantor is, however, entitled to claim any expenses actually incurred during the period of a personal guarantee, and the institution is not obliged to inquire as to how the guarantee produced has been obtained by the customer. Kuwait Finance House (2011) in its Resolution No. 286 stated that it is permissible to charge a fee, which reflects only the actual expenses incurred to avoid riba. Al-Baraka Banking Group (Majmūʿat al-Barakah al-Masrafiyyah) (2007) in its Resolution No. 3/1 stated that the bank cannot charge a fee based on the guaranteed amount; the bank can only charge a fee, which reflects the efforts borne by the bank. Finally, DIB in its Resolution No. 281 stated that the fee must be based on actual services. The bank is not allowed to charge a fee based on the financing amount or its maturity, to avoid riba.

As per the above, the Shari’ah resolutions have agreed that a fee, which is more than the actual expenses is not permitted. Laldin et al. (2012) and Fakhrunnas (2018) also studied the different opinions among fatwa-issuing bodies and found that the Middle East fatwa bodies do not allow a fee, which is more than the actual expenses, while SAC-BNM allows fee charging, which might exceed the actual expenses. They relied on the opinion of Al-Zubailī (2002), who stated that there is a maslahah in allowing a guarantee based on a fee even though it might exceed the actual expenses (Laldin et al., 2012; Fakhrunnas, 2018). In the case of IFIs, if they are not allowed to charge a fee on the common types of guarantee, it would lead to huge risks on the financial institutions. Also, it would hinder any business activities of the customer because no financial institution would be ready to extend a guarantee against a small fee. On this argument, Ishak (2019) concludes that the maslahah of Islamic banks and their customers are found to be considered by SAC-BNM in the implementation of contracts and principles of Islamic banking in Malaysia. These maslahah are embodied in the viability of Islamic banks and the promotion of fairness and transparency between Islamic banks and their customers.

The issue of charging a fee on a guarantee has been studied extensively in Islamic fiqh. The stand by four schools of fiqh could be derived from the references of the madhab. The impermissibility of charging a fee on a guarantee is mentioned in Sharḥ Fath al-Qadīr from Ḥanafī School (Ibn Hammām, 2002), al-Taj wa al-Iklīl li Mukhṭasar Khalīl from Maliki School (Al-Mawwāq, 1994), ʿUṣrayn al-Muḥtāj ʿilla ʿAshūr al-Minhāj from Shafiʿī School (Al-Ramlī,
and al-Mughnī from Hanbali School (Ibn Qudāmah, 1968). In addition, contemporary
fatwa bodies such as AAOIFI, Islamic Fiqh Academy and other Sharī’ah committees have
the same opinion on charging a fee on a guarantee. One of the maṣlahah parameters states
that maṣlahah should not contradict with ijma’. However, the issue of charging a fee on a
guarantee gained a unified stand as per collective ijtihād, as the four schools of fiqh and the
majority of chosen fatwa bodies – except SAC-BNM – agreed on the impermissibility of
charging a fee on a guarantee. Therefore, it can be concluded that charging a fee on a
guarantee based on maṣlahah contradicts with the stand of collective ijtihād, which is
similar to achieving ijma’.

Furthermore, the application of maṣlahah should be general and not for a limited number
in a group of people (Al-‘Uthmān, 1977). Considering the positive impact on three parties (the
guarantor, the beneficiary and the applicant), it is evident that charging a fee will impact a
limited group in expanding their businesses and saving them from uncalculated losses.
Hence, the validity of such a maṣlahah conflicts with this particular parameter.

6.2 Resolution related to ibrāʾ (rebate) in Islamic finance
Ibrāʾ (rebate) refers to a waiver of debt, partially or wholly, in a sale-based contract. On 20
May 2010, SAC-BNM in its 101st meeting resolved that BNM may require IFIs to practice
ibrāʾ with customers who settle their debt prior to the due dates. SAC-BNM relied on the
principle of maṣlahah, as it will preserve customers’ rights and achieve fairness (SAC-BNM,
2010). Also, the resolution refers to al-Zarqa’s (1982) opinion, who says that the inclusion of a
condition in financial contracts such as a sale contract is permissible under the Sharī’ah if
the inclusion is made for the purpose of protecting the interests of the transacting parties
and it does not contradict with the principle of sale and purchase (Laldin et al., 2012).
However, there are differing opinions among scholars about the addition of ibrāʾ in a
contract. Laldin et al. (2012) and Ishak (2019) stated that fatwa-issuing bodies in the Middle
East do not allow ibrāʾ, which is stipulated in the agreement and agreed upfront, while SAC-
BNM does allow it.

Looking at the stand of collective ijtihād bodies, they have similar views when it comes to
the early settlement of a credit sale. The Islamic Fiqh Academy in its Resolution No. 64/2/7
stated that to reduce a deferred debt with the aim of accelerating its repayment, whether at
the request of the creditor or of the debtor (pay less but ahead of time), is permissible in
Sharī’ah and does not fall within the province of ribā if it is not based on an advance
agreement and as long as the relation between the creditor and the debtor is bilateral.
AAOIFI, Sharī’ah Standard No. 8, clause 5/9 stated that it is permissible for the institution
to give up part of the selling price if the customer pays early, provided this was not part of
the contractual agreement. KFH in its Resolution No. 780 stated that the deduction is
permissible if the client did not stipulate the deduction for early settlement up-front, and if it
did not arise from an oral or written commitment in the contract or after it; rather, it should
be by the independent will of the creditor, if he wishes, without any verbal or implied
stipulation. Al-Baraka Banking Group in its Resolution No. 15/1 stated that early settlement
is allowed based on the principle of daʿ wa taʾājaj (take less for accelerating payment) just
as the Islamic Fiqh Academy has agreed on that but with a condition that the ibrāʾ clause
must not be stipulated in the contract. DIB in its Resolution No. 28 stated that early
settlement is allowed based on daʿ wa taʾājaj, as the Islamic Fiqh Academy also agreed on
that but on the condition that the ibrāʾ clause must not be stipulated in the contract and no
extra charge should be requested from the bank to be paid to the client because of the early
settlement. However, the collective ijtihād bodies agreed that stipulated ibrāʾ is not a form of
daʿ wa taʾājaj.
The parameter of being in line with *ijmāʿ* could be looked at in similar lines as given in the previous part on the issue of guarantee against a fee. On the other hand, the application of *maṣlahah* should be general and not for a limited number in a group of people (Al-ʿUtūm, 1977). Considering the positive impact on the customers, who will be willing to settle before time, and on the banks, which will be willing to receive early liquidity, allowing *ibrāʾ* will not impact a large number of people. Hence, the *maṣlahah*, in this case, fails to comply with this parameter.

### 6.3 Resolutions related to restructuring and rescheduling in Islamic financing agreements

The mechanism of restructuring and rescheduling in Islamic finance differs from the mechanisms available in the conventional industry. It needs additional legal documents, which entail an additional legal fee and stamp duty. On 26 June 2002, the SAC-BNM in its 26th meeting resolved the issue of restructuring and rescheduling by inserting an additional paragraph in the agreement of the financing facility to verify the agreement of restructuring and rescheduling. SAC-BNM relied on *maṣlahah* to avoid double payment of the stamp duty (SAC-BNM, 2010). Also, on 27 February 2003, the SAC-BNM in its 32nd meeting resolved that based on mutual agreement, the financing period for the customer may be extended without the need for a new contract, provided that both parties satisfy all concluded promises and the price imposed on the customer does not exceed the original sales price. SAC-BNM resolved the issue faced by IFIs when it comes to restructuring or rescheduling the financing. Charging twice for additional documents for the new agreement means double payment of stamp duty. Thus, SAC-BNM suggested that an additional paragraph for rescheduling and restructuring to be provided in the Islamic financing agreement, if the need arises, be inserted in the original agreement. This would verify the method and avoid double payment of stamp duty. This resolution relied on *maṣlahah*, which is to protect the customers of IFIs from a double charge.

By analyzing these resolutions with the *maṣlahah* parameters, it seems like it has no issues unless it is said that such a resolution is benefiting the involved parties only and not a huge number of people. However, these resolutions have no Shariʿah issues, as it is not a sale of debt or extending debt maturity with extra charges.

### 7. Conclusion

The study focuses on *maṣlahah* in general to understand the role of *maṣlahah* in terms of resolving the Shariʿah issues faced by IFIs. The discussion further includes the different types of *maṣlahah* and their superiority to each other. The study includes the analysis of *maṣlahah* based on resolutions from the SAC-BNM, as well as the opinions of other fatwa-issuing bodies such as AAOIFI, Islamic Fiqh Academy, KFH, DIB and DBB. Therefore, this study aims to assess the extent to which the resolutions that SAC-BNM issued relying on *maṣlahah* have adhered to the parameters for the proper use of *maṣlahah* in fatwas.

The study concludes that the resolutions of SAC-BNM to allow charging fees on guarantee and inclusion of *ibrāʾ* in the financing agreement based on *maṣlahah* is too generic to be included under the definition of *maṣlahah* as defined in the Qurʾān and Sunnah and the relevant parameters of *ijmāʿ*. Further, collective *ijtihād* is considered as *ijmāʿ*; if that is accepted, the considered *maṣlahah* would contradict with the parameter of being in line with *ijmāʿ*. Another parameter of *maṣlahah* is that the impact should be general. It was evident that the *maṣlahah* in these cases is limited with regard to the number of people affected.

For future research in this area, as it has been said that *ijmāʿ* is not possible to be practiced in the current era, researchers may look into the possibility of gaining *ijmāʿ*
through the internet and new technologies by creating a platform and gather all Shari‘ah scholars in that platform. Researchers may try to evaluate how this idea can be implemented and the possibility of calling it *ijmā’*, which is known as one of the primary sources of Shari‘ah.

**References**


An analysis of *maslahah* based resolutions


Further reading


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