Common conceptual flaws in realizing *maqāṣid al-Sharīʿah* vis-à-vis Islamic finance

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Abstract

**Purpose** – This paper aims to scrutinize the misconceptions about *maqāṣid al-Sharīʿah* (objectives of Islamic law) that complicate its actualization, particularly in Islamic finance.

**Design/methodology/approach** – This study adopts a qualitative inductive method to identify the flaws in understanding *maqāṣid al-Sharīʿah* vis-à-vis Islamic finance. It uses the views of classical and modern *maqāṣid* scholars to critically examine the flaws.

**Findings** – This study concludes that the five objectives of the Sharīʿah constitute the framework of *maṣlahah* (well-being). The levels of *maṣlahah* – namely *dārūriyyāt* (essentials), *ḥājiyyāt* (needs) and *taḥsīniyyāt* (embellishments) – are the categories of the means to ends. The demand for financial products falls under the *ḥājiyyāt* and *taḥsīniyyāt* categories, not *dārūriyyāt*. The *maqāṣid* (objectives) are derived from *aḥkām* (provisions) being verified by the parameters, while *aḥkām* are guided by *maqāṣid*.

**Research limitations/implications** – This study recommends further research to theorize the concepts of *dārūriyyāt*, *ḥājiyyāt*, *taḥsīniyyāt* and *mukammāt* (complements); to harmonize the *maqāṣid* with their essential elements and to formulate a conceptual framework for actualizing *maqāṣid al-Sharīʿah* in Islamic finance.

**Practical implications** – This paper will improve perceptions and bridge gaps between the understanding of *maqāṣid* theory and existing practices. It suggests that instead of *dārūriyyāt*, Islamic financial institutions (IFIs) should refer to *ḥājiyyāt* and *taḥsīniyyāt*.

**Originality/value** – This paper identifies and clarifies the misconceptions about *maqāṣid al-Sharīʿah* vis-à-vis Islamic finance in the existing literature. The findings align with the views of leading *maqāṣid* scholars in understanding the idea.

**Keywords** Islamic finance, *Maqāṣid al-Sharīʿah*, *Maṣlahah*, Parameters, Provisions

**Paper type** Literature review

Introduction

*Maqāṣid al-Sharīʿah* (objectives of Islamic law) play a significant role in defining the legality of Islamic dealings as those *maqāṣid* decide the relationship between human behaviour and
its effect on public welfare (Ariff and Rosly, 2011). Hence, scholars stress the need for fiqh (Muslim jurists) to master the knowledge of maqāṣid al-Sharī‘ah in order to perform ijtihād (utmost intellectual effort to make a decision) (Saifudeen et al., 2014). The knowledge of maqāṣid al-Sharī‘ah concerning financial transactions can guide the Sharī‘ah boards of Islamic banks and fiqh boards of international Islamic organizations (Ibn Zughaybah, 2001; Al-Qahtani, 2015; Kholisha et al., 2020). Perhaps it is for this reason that the theory of maqāṣid al-Sharī‘ah has been recently adopted as the guideline in regulating Islamic financial institutions (IFIs) to comply with the moral standards and virtuous consciousness encouraged by Sharī‘ah (Islamic law).

The essence of maqāṣid al-Sharī‘ah is the well-being (maslahah) of humanity. The Sharī‘ah has high regard for economic wealth and considers it as one of the five primary objectives that lead to social well-being (El-Mesawi, 2006). Since the era of Imām al-Ghazālī, there has been a consensus among all scholars – comprising fiqh and usūl (scholars of Islamic legal theory) – on the preservation of wealth as the fifth essential (darūrah) of human beings (Al-Qaraḍāwī, 2008a). Maqāṣid al-Sharī‘ah in Islamic finance denotes the overall goals and meanings that the Sharī‘ah intends to achieve from its tenets and provisions regarding financial activities and transactions (Laldin and Furqānī, 2013); and these are the ends (maqāṣid) in financial transactions. There are some specific maqāṣid of Islamic finance. Once a product is designed to achieve any particular Sharī‘ah objective and is evaluated by the maqāṣid benchmark, it is considered to be in line with maqāṣid al-Sharī‘ah (Mohammad and Shahwan, 2013). Some parameters determine the degree of human needs, and their needs are given priority based on the degrees/levels. Modern Muslim societies have access to different types of financial transactions and financing products. Hence, the maqāṣid al-Sharī‘ah in financial transactions have received significant attention from academia, Islamic finance practitioners and students of this discipline (Ismail and Wan Ibrahim, 2020; Satia Nur and Setya Ayu, 2021).

However, many contemporary researchers in the area of economy and finance do not have proper Sharī‘ah knowledge, particularly a clear understanding of maqāṣid al-Sharī‘ah and the depth of fiqh al-mu‘āmalāt concepts (Dusuki and Abozaid, 2007; Al-Qahtani, 2015; Monawer et al., 2019). Lack of in-depth knowledge may create confusion among contemporary researchers and practitioners over the maqāṣid al-Sharī‘ah in financial transactions (Al‘Amīlī, 2007; Bedoui and Mansour, 2014). The confusion appears over the levels of maslahah, parameters (da‘wābit), maqāṣid and indicators (adillah) of Sharī‘ah (Al-Sabbagh, 2009; Dusuki and Abozaid, 2007). Consequently, the maqāṣid al-Sharī‘ah are inaccurately used in juristic classification (takyif fiqh) and promotion of some financial products (Abozaid, 2010). Some IFIs utilized some financial contracts based on an erroneous understanding of maqāṣid (Rosly and Sanusi, 1999; Usmani, 2007; Ghani and Lambak, 2015; Aziz, 2017). IFIs also promote these products using the concepts of maslahah, darūrah and maqāṣid al-Sharī‘ah that contradict the texts (nusus) of Sharī‘ah. Hence, there is a dire need to ascertain the misconceptions about maqāṣid al-Sharī‘ah and clarify them to prevent any erroneous adoption, misuse or abuse of the concept of maqāṣid al-Sharī‘ah by IFIs.

In this context, the objective of this paper is to provide a critical survey of the modern literature of maqāṣid al-Sharī‘ah within the area of Islamic finance. It scrutinizes the misconceptions about maqāṣid al-Sharī‘ah and clarifies them using financial examples.

The significance of the present research lies in helping to clarify the understanding of maqāṣid al-Sharī‘ah and prevent abuse of the concept. It aims to fill the gap of misunderstanding in the existing adoption of maqāṣid al-Sharī‘ah in IFIs. Contrary to previous studies, it clarifies misunderstandings about the five essential elements of maqāṣid al-Sharī‘ah with examples drawn from the practice of Islamic finance. Methodologically, this paper attempts to correct the existing misconceptions based on the views of classical jurists and leading modern maqāṣid scholars.
This paper begins with the background and rationale of the study in the introduction, followed by a literature review in the second section comprising discussion of the *maqāṣid* of financial transactions and prior reviews of literature. The subsequent section describes the methodology adopted in this study. Section four critically analyzes fallacies associated with *maqāṣid al-Shari‘ah* and provides clarifications. The conclusion summarizes the results of the scrutiny and puts forward some recommendations for further research.

**Literature review**

*Maqāṣid al-Shari‘ah in Islamic finance*

Wealth preservation is the fifth fundamental and universal objective of Shari‘ah that is relevant to Islamic finance (Al-Ghazālī, 1413 AH; Al-Shāṭibi, 1997; Al-Qaradāwī, 2008b). The Shari‘ah requires the acquisition of everything beneficial for the healthy growth of wealth, and the rejection of everything that corrupts it. The means of preserving wealth are categorized into three levels: ḍarūrī (essential), ḥāji (needing) and taḥṣīnī (embellishing). There is also a mukammil (complements) category of means for each of the three groups (Al-Ghazālī, 1413 AH; Al-Shāṭibi, 1997).

The means of preserving wealth are also classified into kullī (macro) and juz’ī (micro). For example, “prevention of transgression” (man‘ al-i’tidā) is a macro-objective to be achieved in financial transactions. This is compared to micro-objectives such as the prohibition of usurpation (ghashb) and theft (ṣariqah). However, “prevention of transgression” is also considered a micro-objective when compared to an even more comprehensive macro-objective such as “preservation of wealth” (ḥifż al-māḥ) (Ibn Bayyah, 2010).

Ibn ‘Ashūr (2001) highlighted for the first time the specific *maqāṣid* of different areas of human life, including the specific *maqāṣid* (maqāṣid khāṣṣah) in financial transactions. He mentioned five *maqāṣid* of financial transactions under a particular topic entitled “*maqāṣid al-tašarrufat al-māḥiyah* (objectives of financial transactions)” in his remarkable book *Maqāṣid al-Shari‘ah al-Islāmiyyah* (objectives of Islamic Law). The five objectives are circulation (rawājī), transparency (wudūḥ), preservation (ḥifż), durability/certainty (ḥabāṭ) and equity/justice (ʿad) (El-Mesawi, 2006).


For example, Ibn Bayyah (2010) dealt with the five *maqāṣid* mentioned by Ibn ‘Ashūr through the processes of review, justification, explanation, addition and rephrasing. He also rearranged those *maqāṣid* in order of accumulation (kashb) and wealth production (ijād al-māḥ), preservation of wealth (ḥifż al-māḥ), transparency (wudūḥ) and circulation (tabādul/tadāwul).

As the means of the *maqāṣid* “preservation of wealth”, he mentioned five micro-*maqāṣid*, namely: proper management (tadbīr), moderation (wasatiyyah), mutual consent (tarāḍī) of both parties, the prohibition of hoarding (iḥtikār) and the prohibition of transgression (i’tidā) such as robbery, theft and harming others’ ownership. The *maqāṣad* of mutual consent is achieved through the prohibition of cheating (ghishsh) and hoaxing (khādī‘ah) and refraining the legally incompetent (mahlīr ʿalayhi) from financial transactions (Ibn Bayyah, 2008, 2010). He also mentioned that *maqāṣid al-Shari‘ah* pertaining to wealth fall into each level of ḍarūrī, ḥāji and taḥṣīnī. For example, avoidance of ṭābā is a main objective (maqāṣad ʿasb), and it falls under the ḍarūrīyyat. The prohibition of consuming others’ property unlawfully, stealing and hoarding (iḥtikār) are *maqāṣid* as well (Ibn Bayyah, 2008). Al-Shubaylī (2015) added some financial *maqāṣid*, namely bearing risk (muhkāṭarah), protection of wealth, permitting prohibited means (waṣā’il) in the absence of the effective
cause (ʿllah) of the prohibition, encouraging productive investment, avoiding speculation, possession of commodities and facilitation of procedures. Fādil (2017) emphasized the maqāṣid of supporting wealth growth (numū), strengthening human dignity (karāmah) and promoting equitable distribution of wealth.

Prior reviews of literature
Previous literature reviews, including critical studies and systematic reviews, have mainly been conducted on the understanding of maqāṣid al-Sharīʿah vis-à-vis Islamic economics, banking and finance. However, only a few studies attempted to explore the conceptual gaps in understanding of maqāṣid al-Sharīʿah vis-à-vis Islamic finance. As for critical studies, Dusuki and Abozaid (2007) raised some issues, namely:

1. Inadequate knowledge of maqāṣid al-Sharīʿah in Islamic economics;
2. Erroneous adoption of maqāṣid al-Sharīʿah in Islamic banking and finance;
3. Potential conflicts between macro-maqāṣid and micro-maqāṣid; and
4. Possible abuse of maqāṣid al-Sharīʿah to justify some financial contracts which contradict the Sharīʿah texts.

Dusuki (2009) and Abozaid (2010) also noticed an overemphasis on form over substance to rationalize some financial products by maṣlahah.

As to the systematic reviews on the current research topic, Shinkafi and Ali (2017) reviewed 62 articles on maqāṣid al-Sharīʿah concerning Islamic economy, banking, finance, Islamic financial products and economic development. However, the authors found only the four misconceptions criticized by Dusuki and Abozaid (2007). Eldersevi and Haron (2019) commented on the non-methodological use of maṣlahah by IFIs’ Sharīʿah committees in justifying some financial products and services by compromising Sharīʿah principles to maximize profits. Abozaid (2010) addressed the methodology of validating financial products and the misguided justification of Sharīʿah conformity for banking products. He raised and clarified two misconceptions, namely conflict between a perceived maṣlahah and Sharīʿah texts and overruling prohibitions on the grounds of darūrah. Apart from these challenges, some other prevalent misconceptions impede the realization of maqāṣid al-Sharīʿah in Islamic finance. There is a dire need to raise such issues and correct the misconceptions to prevent any possible abuse of maqāṣid al-Sharīʿah. This paper aims to fill in this gap.

Research methodology
This paper adopts a qualitative inductive method. Secondary sources of data on the topic are collected from different published journal articles and books in Arabic and English. It reviews the classical and modern literature on maqāṣid al-Sharīʿah vis-à-vis Islamic finance to explore misconceptions about maqāṣid al-Sharīʿah and their adoption in Islamic finance. This study identifies five main misconceptions:

1. Distinction between maqāṣid (objectives) and maṣāliḥ (well-being),
2. Confusion over the levels of maṣāliḥ,
3. Mix-up of primary objectives with others,
4. The neglect of ahkām (provisions) and
5. The neglect of dawābiḥ (parameters).
This study also employs a critical analysis method to examine these misconceptions. The scrutiny is underpinned by the views of classical theorists’ views, namely Al-Ghazālī (1413 AH), Al-Juwaynī (1418 AH), Al-Fāṣi (1993), Al-Shāṭībī (1997) and Ibn ʿAṣḥār (2001) as well as the leading contemporary maqāsid scholars, namely Al-Būṭū (1973), Al-Zuḥaylī (1986), ʿAtiyyah (2003), Al-Qaradāwī (2008a) and Al-Raysūnī (2013). This study corrects the misconceptions and furnishes some concrete suggestions and recommendations towards an accurate adoption of maqāsid al-Sharīʿah in Islamic finance.

Common flaws in understanding maqāsid al-Sharīʿah and financial examples

Distinction between the terms “maqāsid” and “maṣāḥīḥ”

The major challenge faced by some contemporary researchers and practitioners relates to the terms maqāsid and maṣāḥīḥ. These two terms are perceived as two different principles or legal devices of Sharīʿah. Based on this perceived difference, some try to integrate one with another and formulate a framework to guide financial institutions, design products and evaluate projects (Jalil, 2006; Dusuki and Abozaid, 2007; Darus et al., 2013). This dual understanding of the very essence of maqāsid and maṣāḥīḥ leads to challenges in comprehending the theory of maqāsid al-Sharīʿah and its application. The same applies to realizing maqāsid in financial activities. The perceived distinction between the two terms contributes to an inaccurate classification (takyīf) of financial products and promotion of those products based on maṣāḥīḥ.

For example, some financial products based on bayʿ al-ʿīnah (sale and buyback), such as bayʿ bithaman ājil (deferred cost-plus rate), Islamic credit cards, Islamic private debt securities (IPDS) and Islamic overdraft facilities, have been practiced in several Muslim countries (Dusuki and Abozaid, 2007; Ibn ʿAṣḥār, 2009; Kamali, 2017). In these products, IFIs should act as traders – being involved in the process of selling or buying, according to the meaning of the word bayʿ. In reality, IFIs are merely financiers that provide funds without taking risks or participating in the investment process. Bayʿ al-ʿīnah here is resorted to as a legal device (jūḥah) providing a screen for ribā-based financing. Yet, as far as the substance is concerned, bayʿ al-ʿīnah-based financing and the conventional ribā-based financing are the same. They accomplish the same goals and share the same economic essence and effects, which is ribā, albeit their forms differ (Dusuki and Abozaid, 2007). Some IFIs maintained the legality of forms, abiding by provisions according to Imam Shāḥī’s view. Yet, they overlooked the legality of the substance by neglecting the conditions set by Imam Shāḥī. Despite the existence of ribā, IFIs rationalized the products on the basis of maṣāḥīḥ (Rosly and Sanusi, 2001). Here, the flaw in the distinction between maṣāḥīḥ and maqāsid becomes relevant. Some practitioners permitted the products structured by bayʿ al-ʿīnah due to maṣāḥīḥ, based on the need of the society. However, they forgot that maṣāḥīḥ could not be achieved by overlooking the maqāsid. They neglected the maqāsid of avoiding the injustice caused by ribā (Al-Mubārak and Osmani, 2010). Thus, the assumed distinction between maṣāḥīḥ and maqāsid led to the inaccurate adoption of financial products. Surprisingly, maqāsid al-Sharīʿah have been used here to justify the categorization of such contentious transactions whereas due consideration of maqāsid al-Sharīʿah would be the main criterion to determine their prohibition as they entail injustice resulting from ribā.

To clarify, the essence of maqāsid and maṣāḥīḥ is similar, and both terms are not two different principles. Instead, their function is analogous, and they are sometimes used interchangeably (Abdelkader, 2003; ʿAwdah, 2006; Auda, 2007). Kamali (2008) also has a similar view as he joins both terms while discussing the categories of maqāsid. He says:

The ʿulamāʾ (Muslim scholars) have classified the entire range of maṣāḥīḥ-cum-maqāsid into three categories in descending order of importance, beginning with the essentials followed by the complementary benefits, and then the embellishments (Kamali, 2008, p. 2).
Al-Ghazālī (1413 AH, p. 174) states

Maslahah is essentially an expression for the acquisition of benefit or the repulsion of injury or harm, but that is not what we mean by it, because the acquisition of benefits and the repulsion of harm represent human goals, that is, the welfare of humans through the attainment of these goals. What we mean by maslahah, however, is the preservation of the Lawgiver’s objectives. The Lawgiver’s objectives are five, and these are the preservation of religion, life, mind, offspring, and wealth. Everything that leads to the preservation of these five foundations is considered maslahah, and everything that leads to the disruption of these foundations is mafsadaḥ, and its removal is maslahah. And whenever we mention “intuitive meaning” (ma’nā makhayyal) or “appropriate” (munāṣib) in the chapter of analogy (qiyās), we mean by it this type [of maslahah]. And the preservation of these five foundations falls at the level of essentials (darūriyyāt), and that is the strongest level of maslahah.

According to Al-Ghazālī (1413 AH), maqāsid comprise an integral part of maslahah, and both terms lead to the same direction, which is well-being. The difference between them appears in their perspectives and forms, not in essence and substance. Maqāsid refer to the goals behind the provisions (akhirām) of Shari’ah intended by the Lawgiver (Shari’), whereas maslahah denotes the preservation of the goals. Also, the five maqāsid could be perceived as the framework of maslahah because it cannot be achieved by neglecting the maqāsid.

Al-Shaṭṭībī (1997) also mentioned the five essentials as the fundamentals or foundations of all universals (kullīyyāt). Thus, both terms differ from and relate to each other. As for the realization of maqāsid al-Shari’ah in financial activities, Ibn ʿĀshūr (2001) mentioned five financial objectives, namely circulation, transparency, preservation, durability and equality. These five ends (maqāsid) constitute the framework of maslahah in Islamic finance. Financial well-being (masālīḥ) must be realized within the framework of these five objectives. Thus, the economic activities will comply with the intents of Shari’ah.

Confusion over the levels of masālīḥ
The perception of darūriyyāt, ḥājiyyāt, taḥsīniyyāt and mukammilāt still appears vague and obscure in the mind of some practitioners, as the literature shows. For example, a mix-up is mainly observed between darūrah (essential) and ḥājah (need). Besides, confusion also arises between darūrah and maslahah sometimes (Awang et al., 2014). Moreover, the maslahah of the mukammilāt category sometimes appears like any of the three primary levels. Furthermore, misunderstanding of the types of darūrah and ḥājah appears among some practitioners. Such confusion over the categories of maslahah affects the understanding of the level of individuals’ financial needs and the degree of IFIs’ sustainability. It thus contributes to an inaccurate fiqh categorization of financial products.

For example, the need for some banking products and takāful/retakāful was perceived as falling under the darūriyyāt level, which is the most substantial level of human needs, albeit none of the financial transactions falls under darūriyyāt (Dusuki and Abozaid, 2007; Dusuki, 2015; Ghani and Lambak, 2015). Instead, all types of financial contracts, including sale, lease, partnership, etc. fall under ḥājiyyāt, and Islam permits these transactions due to ḥājah as previously mentioned. The perceived meaning of darūrah perhaps led some banks in Malaysia to promote some products using bayʿ al-ʿinah, which contain ribā, as permissible. For example, over the last two decades, there was a tendency in many IFIs to handle use darūrah as a rationale to legalize certain transactions, namely the features of guaranteed profit and principal in equity-based sukūk structures (Dusuki, 2015), albeit all jurists agreed on their impermissibility (Usmani, 2007).

Rosly and Sanusi (2001) also criticized the use of bayʿ al-ʿinah without fulfilling the contract’s conditions that meet Shari’ah principles and objectives. This example applies to those who cite the permissibility of bayʿ al-ʿinah according to the Shafi’i School. However, the
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14,2

Shāfi‘i School only allows *bay‘ al-‘īnah* with certain conditions. If an IFI applies *bay‘ al-‘īnah* without observing those conditions, there is no school of Islamic jurisprudence that would permit it. In addition, the relevance of *darūrah* itself is subject to scrutiny. It should be investigated by the following questions:

1. Which contracting party is in a *darūrah* situation?
2. Are there any financial alternatives, whether from the bank’s products or other sources like *gard hasan* (interest-free loan), zakat, charity, etc., to fulfil the need?
3. Which of the *maqāsid* does this product serve?

The need for banking products does not fall under *darūriyyat* because the banking practice itself is not essential for the survival of an individual, albeit products are necessary for the survival of banks (Dusuki and Abozaid, 2007). However, it may fall under *hājiyyat* if it becomes the sole means of fulfilling one’s need, or it may fall under *taḥsiniyyat*. Also, one has many alternatives to satisfy his need that negate the *darūrah* situation. It will be more apparent if his case is checked with the parameters of *darūrah*. Besides, the contracts of financial transactions are permitted to achieve the *maqāṣad* of circulation (*rawā‘i* ) of wealth which falls under *hājiyyat* (El-Mesawi, 2006). Thus, the need for sukūk structures neither falls under the *darūrah āmmah* (general necessity) nor the *darūrah khāssah* (specific necessity). Instead, it falls under *hājū*. Perhaps, for this very reason, Usmani (2007), Dusuki (2015) and Aziz (2017) criticized the rationalization of banking products using *darūrah*. Aziz (2017) viewed that IFIs deal with prohibited elements as means of *darūrah* and used it as a mechanism to safeguard the conventional products. The inaccurate categorization of equity-based sukūk structures may have resulted from confusion over the levels of *māsūlīh*. Though the *darūrah* category of *maslahah* permits individuals to consume illegal goods, it does not allow IFIs to legalize prohibited products. In addition, all types of financial transactions, including IFIs’ products and services, fall under the *hājū* category of *maslahah*, not *darūrah per se*.

To clarify the categories of *māsūlīh*, the *darūriyyat* (i.e. the first level of *māsūlīh*) are benefits whose realization is vital for the society, both collectively and individually. The community’s social order will not correctly function if there exists any flaw in these *māsūlīh* (El-Mesawi, 2006). The examples of *darūriyyat* are the death sentence for a disbeliever who deceives and punishment for an innovator in religion (*mubtadi‘ī al-dīn*). Besides, the five pillars of belief (*imān*), execution of blood money (*diyyah*) and death sentence (*qisas*), marriage, the prohibition of adultery and alcohol are also instances of *darūriyyat* (Al-Ghazālī, 1413 AH; Al-Būrī, 1973; Al-Zuḥaylī, 1985).

As for *hājiyyat* (i.e. the second level of *māsūlīh*), according to Al-Shāṭībī (1997), it includes what is needed to achieve comfort and relieve hardship. If it is neglected, human beings (*mubahāf*) will undergo hardship and difficulty. Nonetheless, the injury resulted from neglect of this category cannot be equated with that of *darūri* category. As the instances of the *hājū* category, the *üşūliyyan* referred to contracts of *bay‘* (sale), *ijarah* (leasing), *muskārakah* (partnership), *qirād* (speculative partnership) and *musaqāh* (sharecropping) (El-Mesawi, 2006).

Concerning *taḥsiniyyat* (i.e. the third category of *māsūlīh*), according to Al-Ghazālī (1413 AH), it functions as adorning factors that facilitate the achievement of virtues and pleasing ways in manners and dealings, encourage the means of good and block the means of evil, etc. (El-Mesawi, 2006).

Some other types of *māsūlīh* are called *mukammimāt*. They are complementary to each of the three levels. The *mukammimāt* are those matters whose absence will not necessarily lead to the destruction of the *māsūlīh* of the respective category, albeit the defect of *mukammimāt* causes a defect in the main category (Al-Ghazālī, 1413 AH; Al-Zuḥaylī, 1986; Al-Shāṭībī, 1997).
Examples of *mukammilāt* are a witness for a sale contract, pawn (*rahn*), option (*khīyūr*), charity out of pure earning, etc (Al-Khādīmī, 2001). Interestingly, due to the hierarchical relationship between the levels of *mašālah*, the *mašālah* of a lower category plays the role of *mukammil* to another *mašālah* of a higher class, i.e. the *ṭahsīniyyāt* are complementary for *ḥājiyyāt*. In contrast, the *ḥājiyyāt* and *ṭahsīniyyāt* are complementary for *ḍarūriyyāt*. Moreover, the complement of a lower category is also the complement to a higher category. It is due to the principle that the complement of a complement is a complement or the means of a means is a means (Al-Ŷūbī, 1998; Al-Khādīmī, 2001). Thus, the three levels of *mašālah* pertain to the means (*wasaʿīl*) not the ends (*maqāṣid*) (ʿAtiyah, 2003).

In connection with the classification of *ḍarūrah*, it is primarily of two types: *ḍarūrah fiqhiyyah* (legal essentials) and *ḍarūrah usūliyyah* (jurisprudential essentials). The former is perceived from a *fiqh* (legal) perspective, is partial (*juzʾi*) and relates to individuals. In contrast, the latter is adopted from an *usūl* (jurisprudential) perspective, is universal (κόλλη) and concerns the whole of humankind. Similarly, *ḥājah* is of two types: *ḥājah fiqhiyyah* (legal need), which is private, and *ḥājah usūliyyah* (jurisprudential need), which is public (Ibn Bayyah, 2009).

To differentiate, *ḍarūrah fiqhiyyah* is defined as: “a situation in which one reaches a limit where if one does not take a prohibited thing, one will perish or be about to perish” (Al-Suyūṭī, 1959, p. 61). Al-Juwaynī (1418 AH) says that this type of *ḍarūrah* does not establish an absolute ruling on a kind (*jins*); instead, it applies to specific persons for eating dead meat and food owned by others to be permissible in case of perishing. As for *ḍarūrah usūliyyah*, it is defined as:

> a compelling situation resulting in fear of injury to one’s life, organs, lineage, reason or his property. It is a license which not only allows a Muslim to commit a prohibited act but to omit an obligation as well, or delay an obligation (Al-Zuḥaylī, 1985, pp. 67–68).

According to Al-Juwaynī (1418 AH), this type of *ḍarūrah* establishes an absolute ruling on a kind, albeit its ruling differs concerning specific persons. For example, the sale is a *ḍarūrah* at the communal level since:

if people do not exchange with one another what is in their possession, this will lead to an obvious need. The practice of buying and selling, then, rests upon *ḍarūrah* which results from [the nature of this] type [of transaction] and the existence of the community (Al-Juwaynī, 1418 AH, p. 923; Al-Raysūmī, 2006, p. 292).

Thus, *ḍarūrah fiqhiyyah* differs from *ḍarūrah usūliyyah*. Furthermore, *ḍarūrah* differs from *ḥājah* in several aspects such as:

1. The hardship in *ḍarūrah* is more than that in *ḥājah*;
2. *Ḍarūrah* originates from what is unlawful by its own sake, or the thing itself is inherently forbidden (*ḥaram li dhātihi*), such as murder, theft and what Allah mentioned in the Qurʾān, whereas *ḥājah* originates from what is unlawful due to external factors (*ḥaram li ghayrīhi*) such as sales with *riba*. Therefore, selling is permitted, but *riba* is prohibited;
3. The basis of *ḍarūrah* is compulsion (*ʾiljā*), whereas the basis of *ḥājah* is ease (*taysīr*); and
4. The applications of *ḍarūrah*’s rulings are temporary, whereas the applications of *ḥājah*’s rulings are continuous (Kāfī, 2004; Ibn Bayyah, 2009).

Besides, *mašālah* is different from *ḍarūrah*, albeit it is one of the categories of *mašālah*. There is no equipollence (*talāzum*) between *mašālah* and *ḍarūrah*, which allows the
promotion of *maslahah* at the expense of *darūrah*. Thus, the relation between them is that *maslahah* is *ʿamm* (superordinate/hyponym) or macro (*kullih*), whereas *darūrah* is *khās* (hyponym) or micro (*juṣṭī*). The *masāliḥ* of the *mukammālât* category also play an important role in realizing each of the categories: *darūriyyāt, ḥajjīyyāt* and *taḥsiniyyāt*. The defect of *mukammālât* causes a defect in the original categories (*ḥisb*) of *maslahah* (Al-Ghazālī, 1413 AH; Al-Shāṭibī, 1997).

To further crystallize, the five *darūriyyāt* are universal, meaning, if any of them is completely absent, the whole community will be in trouble. *Darūriyyāt* are so named based on the universal concept (*maḥfīm kullih*) and general genre (*ʿumūm al-nawī*), not based on the partial (*juṣṭī*) and individuals’ (*afrād*) perspective (Al-Juwaynī, 1418 AH). This signifies that the five essential *masāliḥ* are termed *darūriyyāt* as end goals in their totality for their universality, not for any partial benefit. Al-Tūfī (1990), Al-Shāṭibī (1997) and Al-Shawkānī (2004) also agreed with Al-Juwaynī (1418 AH) on the essentials due to their universality. *Darūriyyāt* are called that in the sense that the individual life will not function properly, or the community’s order will decline if any of the five objectives is absent or any defect happens to them (Kǎfī, 2004). Hence, it does not necessarily mean that every *maslahah* that incorporates into *darūrah* falls under the same category. Accordingly, the preservation of wealth is the fifth *maslahah* among the five *darūriyyāt*. It does not mean that any financial need or any banking product that necessarily falls under *darūriyyāt* must be achieved (Ibn Bayyah, 2008). However, many *masāliḥ*, besides the five primary objectives, fall within *darūriyyāt*, and this will be discussed in the next section.

**Mix-up of primary objectives with other objectives**

According to the literature, the difference between the five objectives and other objectives falling within *darūriyyāt*, and their *mukammālât*, is not clear to some practitioners. Therefore, they are confused about *darūriyyāt* and *ḥajjīyyāt* in terms of understanding these concepts, their provision (*ḥubn*) and their actualization. The five objectives are exclusively termed the “five universals” (*al-kulliyāt al-khams*), due to the need for them by all of humanity. They are also called the “five essentials” (*al-darūriyyāt al-khams*) based on their necessity for human survival (Al-Zuhaylī, 1985) and “five fundamentals/foundations” (*al-ʿusūl al-khamsah*) due to the fact that they are the foundation of all types of human well-being (Al-Ghazālī, 1413 AH; Al-Shāṭibī, 1997).

There are many forms of *masāliḥ* other than the five objectives (*al-maqāṣid al-khamsah*), be they ends (*maqāṣid*) or means (*wasaʿāl*), which fall within *darūriyyāt*; and there are also many universals (*kulliyāt*) that belong to *ḥajjīyyāt* and *taḥsiniyyāt*. Thus, the five primary objectives are different from other *masāliḥ* that fall within the *darūriyyāt* category and the *masāliḥ* that belong to *ḥajjīyyāt* and *taḥsiniyyāt* categories, whether they are macro (*kulliyāt*) or micro (*juṣṭīyyāt*) (Al-Būrī, 1973; Al-Zuhaylī, 1985; Ṭāḥiyāh, 2003).

As for *darūrah* concerning financial transactions, the safeguard of wealth is *darūri* in its totality because if it disappears completely, human life will be in trouble, and the order of the society will not function properly. The means of safeguarding wealth fall into different levels. Some of them fall within *darūriyyāt* and others belong to *ḥajjīyyāt* and *taḥsiniyyāt*. For example, the circulation of wealth is *darūri*, according to Al-Juwaynī (1418 AH) and Al-Shāṭibī (1997). Similarly, avoidance of *ribā* falls within the *darūriyyāt* category (Ibn Bayyah, 2008). The contracts of sale and lease fall at the *ḥajjīyyāt* level, whereas the prohibition of selling impure objects is considered among *taḥsiniyyāt* (Ibn Bayyah, 2010).

**The neglect of *ahkām* in realizing maslahah**

Understanding the integral relation between *ahkām* and *maqāṣid* is also a challenge facing IFIs’ practitioners. Many perceived a conflict between *ahkām* and *maqāṣid* (Abozaid, 2010).
The supposed conflict has drawn the researchers’ attention for resolution. Scholars tried to resolve the conflict within the “form versus substance” framework and differed in regard to whether to weigh form over substance or substance over form. This framework leads to an unending dispute of the issue as it cannot reconcile both; instead it causes overlooking the issue of reconciling and resolving conflict as discussed by El-Gamal (2006), Dusuki and Abozaid (2007), Abozaid (2010), Maurer (2010), Asutay (2013), Khorasi (2014), Shamsudina et al. (2014), Hanif (2016), Hamour et al. (2019) and Potrowski (2020), and many others. Perhaps, this is one of the reasons behind the neglect of aḥkām or the overlooking of maqāṣid in financial products. There exist examples of neglecting aḥkām and maqāṣid in IFIs’ practices; some transactions strictly stick to Shari’ah principles (aḥkām) without satisfying the maqāṣid. On the other hand, some others resorted to maṣāḥīḥ (analogous to maqāṣid), neglecting the Shari’ah principles. The impact of neglecting aḥkām is an inaccurate categorization of contracts using maṣlahah, as criticized earlier.

To clarify, the aḥkām and maqāṣid are integral parts of the Shari’ah, and they stand for the Shari’ah as two sides of the same coin. The maqāṣid are rooted in the aḥkām and vice versa. In this regard, Al-Fāsi (1993) made a remarkable statement saying: ‘Shari’ah is aḥkām containing maqāṣid, and Shari’ah is also maqāṣid containing aḥkām (p. 47). Al-Rayčūnī (2013, p. 107) explains this statement as follows: the provisions are derived from maqāṣid while the maqāṣid are derived from aḥkām too. It is an excellent and precise expression on the correlation of aḥkām and maqāṣid. It means that the maqāṣid are developed from aḥkām through induction of all Shari’ah texts and provisions related to a particular area or all areas. In contrast, the aḥkām are understood and deduced in the light of related maqāṣid. Thus, both maqāṣid and aḥkām are interconnected, and none can be achieved without the other.

The correlation of aḥkām and maqāṣid in product development could be understood as follows: suppose a financial institution wants to develop a product based on the objective of “taysir” (ease/facilitation). In that case, it should observe the aḥkām focussing on taysir and the aḥkām concerning the contracts that develop a particular product, including all procedures to check whether the aḥkām allow it. If the aḥkām favour the legality of this product, it will be a maqāṣid-based product. However, the adoption of maqṣad or the maqṣad itself will be fallacious and alien to the Shari’ah if it proves otherwise. In addition, if any product is developed based on the fallacious maqāṣid, the product will never satisfy the maqāṣid al-Shari’ah nor the purpose of the product.

The neglect of maqāṣid parameters
Neglecting the parameters (ḍawābit) of maqāṣid while determining any maqṣad is a great mistake. It leads to considering fallacious maqāṣid, a mix-up between maqāṣid and its dimensions (i.e. legal maxims, parameters, rulings, etc.), and consequently causes inaccurate adoption of maqāṣid. For example, Al-Ṣabbāgh (2009) assumed “considering consequences and substances” (ʿtībār al-maʿālāt wa al-maʿānī) as an original objective (maqṣad aslı) in Islamic finance. He also mentioned some other rules as the auxiliary objectives (maqāṣid tabʿiyah) of this original objective. For instance, the permissibility of interference in other’s affairs without his consent even for his benefit; compelling one to do what benefits others but does not harm; compelling compensation to remove injustice, to prevent harm, to fulfil the needs of hājah or darurah level, etc. In addition, Al-ʿAskar (1435 AH) mentioned “blocking the means” (sadd al-dharāʾī) as one of the maqāṣid al-Shari’ah and tried to rationalize some contracts.

However, the concept of “blocking the means” and the concept of “considering consequences and substances” and their sub-concepts are not maqāṣid for the following reasons: first, these concepts are juristic indicants (adillah usūliyyah) or juristic methods (manāḥīj usūliyyah) to understand and realize the maqāṣid al-Shari’ah (Würqiyah, 2003).
Second, the assumed maqāsid is not disciplined (mundhabīt) and hence not in line with the parameters of maqāsid. As for the auxiliary objectives, they could not also be considered maqāsid for some reasons. First, these phrases represent some parameters (dawābīt) to regulate interference in others’ affairs. Second, the wording of the concepts is not precise and concise. Nevertheless, classical jurists and contemporary scholars have crystallized the objectives of Sharī‘ah in terms of wording and expressions such as the five ends of financial transactions (namely, circulation, transparency, preservation, certainty, equity) besides the five primary objectives of Sharī‘ah (namely, religion, life, intellect, offspring, and wealth).

To clarify, the maqāsid are regulated and determined by certain parameters (dawābīt). The singular Arabic term dābit is defined as “an inclusive (kullī) principle, which applies to several details (juz’īyyah) under a particular chapter or group” (Al-Maymūn, 2005, p. 129). The parameters of maqāsid are the regulating principles that verify the maqāsid, crystallize the essence of maqāsid, and control its notion from misconception, misuse and deviation. Yet, some researchers discussed the same parameters as the conditions (shurūt) of maqāsid (Al-Mubarak and Osmani, 2010), while some others discussed them as characteristics (khassā’īs) (Al-Ahmādī, 2016).

The maqāsid and/or masāliḥ are derived from the detailed indicants (adillāh tafsīliyyah) of Sharī‘ah. Hence, maqāsid and masāliḥ are the kullī which is inclusive, whereas the indicants and provisions are the juz’ī which is partial. An inclusive objective cannot be understood or actualized without observing the detailed indicants. As the detailed indicants of Sharī‘ah are numerous, the nisīliyyah formulated parameters to make a bridge between kullī and juz’ī as well as to control the maqāsid and connect them with detailed indicants. Any maqāṣid or maslāhah neglecting these parameters will be considered alien to Sharī‘ah (Al-Būṭī, 1973). The parameters of maqāṣid are legitimacy (sharī‘yyah), not negating the original indicant, certainty (thubūt), rationality (ma’qūliyyah), discipline (indībāt), generality (kullīyyah), constancy (iṭtirād) and not leading to the loss of a greater maqāṣid (Al-Būṭī, 1973; Ibn ’Umar, 2009).


All these criteria should be fulfilled in any concept to be considered as the objective of Sharī‘ah. Any maqāṣid that is not justified by these parameters will be deemed fallacious. Consequently, the financial products rationalized with fallacious maqāṣid will fail to meet the maqāṣid al-Sharī‘ah.

Conclusion and recommendations

This paper has made a critical assessment of the contemporary literature on maqāṣid al-Sharī‘ah in Islamic finance, identified five conceptual flaws and clarified them. The significant findings to emerge from this study can be summarized as follows.

The maqāṣid (objectives) refer to underlying purposes behind the provisions of Sharī‘ah intended by the Lawgiver, whereas maslahah denotes preservation of the goals. The five primary maqāṣid constitute the framework of maslahah. The function of maqāṣid and masāliḥ is analogous; they are different only in perspectives; hence, they are sometimes used interchangeably. The three levels of masāliḥ, namely darurīyyah, hājjīyyah and tahiṣnīyyah pertain to the means (wasā’īḥ) to the ends (maqāṣid). The darurīyyah originated from human survival, whereas the hājjīyyah stemmed from hardship in human life. Financial products are related to the hājjīyyah and tahiṣnīyyah but not darurīyyah. Maslahah does not necessarily mean darurīrah but instead comprises darurīrah as a component. Thus, the relation between maslahah and darurīrah is superordination/hypernymy. The former is superordinate/hypernym (āmmi), whereas the latter is hyponym (khāṣ), or in other words, the former is macro (kullī), whereas the latter is micro (juz’ī).
The five primary objectives are called *darūriyyat* as end goals in totality due to their universality, not for any partial benefit. The five primary *maqāsid/masālah* are different from other categories of *masālah*, whether they fall within *darūriyyat*, *ḥājiyyat* or *tahsinīyyat*. Similarly, the means to safeguarding wealth fall into different levels. However, the demand for banking products does not fall under *darūriyyat*, but rather it may fall under *ḥājiyyat* if it becomes the sole means of fulfilling one’s need, or it may fall under *tahsinīyyat*. The *maqāsid* are derived through induction of *ahkām* of Shari’ah, while *ahkām* are understood in the light of *maqāsid*. *Aḥkām* and *maqāsid* stand as the two sides of Shari’ah; neither can be achieved without the other; thus, both are interconnected. The parameters verify the *maqāsid*, control them and connect them with related indicants. Any *maqāṣid* or *masālah* neglecting the parameters will be considered strange to the Shari’ah.

This study recommends the harmonization of the objectives with their essential elements (*mustalzamāt*) — the parameters and provisions — while designing or adopting any product under any particular objective. Future research may also theorize the concepts of *darūriyyat*, *ḥājiyyat* and *tahsinīyyat*, comprising their classifications, parameters and other details in the English language. The paper also recommends formulating a framework of actualizing *maqāsid al-Shari’ah* in Islamic finance.

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