

# Common conceptual flaws in realizing *maqāsid al-Sharī'ah* vis-à-vis Islamic finance

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## Abstract

**Purpose** – This paper aims to scrutinize the misconceptions about *maqāsid al-Sharī'ah* (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 *maqāsid al-Sharī'ah* vis-à-vis Islamic finance. It uses the views of classical and modern *maqāsid* scholars to critically examine the flaws.

**Findings** – This study concludes that the five objectives of the *Sharī'ah* constitute the framework of *maslahah* (well-being). The levels of *darūriyyāt* (essentials), *hājiyyāt* (needs) and *taḥsīniyyāt* (embellishments) – are the categories of the means to ends. The demand for financial products falls under the *hājiyyāt* and *taḥsīniyyāt* categories, not *darūriyyāt*. The *maqāsid* (objectives) are derived from *ahkām* (provisions) being verified by the parameters, while *ahkām* are guided by *maqāsid*.

**Research limitations/implications** – This study recommends further research to theorize the concepts of *darūriyyāt*, *hājiyyāt*, *taḥsīniyyāt* and *mukammilāt* (complements); to harmonize the *maqāsid* with their essential elements and to formulate a conceptual framework for actualizing *maqāsid al-Sharī'ah* in Islamic finance.

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

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

**Keywords** Islamic finance, *Maqāsid al-Sharī'ah*, *Maslahah*, Parameters, Provisions

**Paper type** Literature review

## Introduction

*Maqāsid al-Sharī'ah* (objectives of Islamic law) play a significant role in defining the legality of Islamic dealings as those *maqāsid* decide the relationship between human behaviour and



its effect on public welfare (Ariff and Rosly, 2011). Hence, scholars stress the need for *fuqahā'* (Muslim jurists) to master the knowledge of *maqāsid al-Sharī'ah* in order to perform *ijtihād* (utmost intellectual effort to make a decision) (Saifuddeen *et al.*, 2014). The knowledge of *maqāsid 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 *maqāsid 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 *maqāsid al-Sharī'ah* is the well-being (*maṣlahah*) 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 Imam al-Ghazālī, there has been a consensus among all scholars – comprising *fuqahā'* and *usūliyyūn* (scholars of Islamic legal theory) – on the preservation of wealth as the fifth essential (*darūrah*) of human beings (Al-Qaradāwī, 2008a). *Maqāsid 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 Furqani, 2013); and these are the ends (*maqāsid*) in financial transactions. There are some specific *maqāsid* of Islamic finance. Once a product is designed to achieve any particular Sharī'ah objective and is evaluated by the *maqāsid* benchmark, it is considered to be in line with *maqāsid 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 *maqāsid 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 *maqāsid 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 *maqāsid al-Sharī'ah* in financial transactions (Al-ʿAmīlī, 2007; Bedoui and Mansour, 2014). The confusion appears over the levels of *maṣlahah*, parameters (*ḍawābīt*), *maqāsid* and indicants (*adillah*) of Sharī'ah (Al-Sabbāgh, 2009; Dusuki and Abozaid, 2007). Consequently, the *maqāsid al-Sharī'ah* are inaccurately used in juristic classification (*takyīf fiqhī*) and promotion of some financial products (Abozaid, 2010). Some IFIs utilized some financial contracts based on an erroneous understanding of *maqāsid* (Rosly and Sanusi, 1999; Usmani, 2007; Ghani and Lambak, 2015; Aziz, 2017). IFIs also promote these products using the concepts of *maṣlahah*, *darūrah* and *maqāsid al-Sharī'ah* that contradict the texts (*nusūs*) of Sharī'ah. Hence, there is a dire need to ascertain the misconceptions about *maqāsid al-Sharī'ah* and clarify them to prevent any erroneous adoption, misuse or abuse of the concept of *maqāsid al-Sharī'ah* by IFIs.

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

The significance of the present research lies in helping to clarify the understanding of *maqāsid al-Sharī'ah* and prevent abuse of the concept. It aims to fill the gap of misunderstanding in the existing adoption of *maqāsid al-Sharī'ah* in IFIs. Contrary to previous studies, it clarifies misunderstandings about the five essential elements of *maqāsid 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 *maqāsid* 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 *maqāsid* 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 *maqāsid al-Sharī'ah* and provides clarifications. The conclusion summarizes the results of the scrutiny and puts forward some recommendations for further research.

## Literature review

### *Maqāsid al-Sharī'ah in Islamic finance*

Wealth preservation is the fifth fundamental and universal objective of Sharī'ah that is relevant to Islamic finance (Al-Ghazālī, 1413 AH; Al-Shātībī, 1997; Al-Qaradāwī, 2008b). The Sharī'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: *darūri* (essential), *hājī* (needing) and *tahsīnī* (embellishing). There is also a *mukammil* (complements) category of means for each of the three groups (Al-Ghazālī, 1413 AH; Al-Shātībī, 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 (*ghaṣb*) and theft (*sariqah*). However, "prevention of transgression" is also considered a micro-objective when compared to an even more comprehensive macro-objective such as "preservation of wealth" (*ḥifẓ al-māl*) (Ibn Bayyah, 2010).

Ibn 'Ashūr (2001) highlighted for the first time the specific *maqāsid* of different areas of human life, including the specific *maqāsid* (*maqāsid khāṣṣah*) in financial transactions. He mentioned five *maqāsid* of financial transactions under a particular topic entitled "*maqāsid al-taṣarrufāt al-mālīyyah* (objectives of financial transactions)" in his remarkable book *Maqāsid al-Sharī'ah al-Islāmiyyah* (objectives of Islamic Law). The five objectives are circulation (*rawāḡ*), transparency (*wuḍūh*), preservation (*ḥifẓ*), durability/certainty (*thabāt*) and equity/justice (*ʿadl*) (El-Mesawi, 2006).

Afterwards, many contemporary scholars and researchers, namely Chapra (1979), Al-Yūbī (1998), Ibn Zughaybah (2001), Sānū (2002), Al-Qaradāwī (2008b), Al-Husayn (2009), Ibn Bayyah (2010), Al-Raysūnī (2012), Lahsasna (2013), Laldin and Furqani (2013) and Āmāl (2013) and others, contributed to the *maqāsid* of economic order and financial transactions throughout the period from Ibn 'Ashūr until now.

For example, Ibn Bayyah (2010) dealt with the five *maqāsid* mentioned by Ibn 'Ashūr through the processes of review, justification, explanation, addition and rephrasing. He also rearranged those *maqāsid* in order of accumulation (*kasb*) and wealth production (*ijād al-māl*), preservation of wealth (*ḥifẓ al-māl*), transparency (*wuḍūh*) and circulation (*tabādul/tadāwul*).

As the means of the *maqāsid* "preservation of wealth", he mentioned five micro-*maqāsid*, namely: proper management (*tadbīr*), moderation (*wasatīyyah*), mutual consent (*tarāḍī*) of both parties, the prohibition of hoarding (*ihṭikhār*) and the prohibition of transgression (*i'tidā'*) such as robbery, theft and harming others' ownership. The *maqāsid* of mutual consent is achieved through the prohibition of cheating (*ghishsh*) and hoaxing (*khadī'ah*) and refraining the legally incompetent (*mahjūr 'alayhi*) from financial transactions (Ibn Bayyah, 2008, 2010). He also mentioned that *maqāsid al-Sharī'ah* pertaining to wealth fall into each level of *darūri*, *hājī* and *tahsīnī*. For example, avoidance of *ribā* is a main objective (*maqṣad aṣlī*), and it falls under the *darūriyyāt*. The prohibition of consuming others' property unlawfully, stealing and hoarding (*ihṭikhār*) are *maqāsid* as well (Ibn Bayyah, 2008). Al-Shubaylī (2015) added some financial *maqāsid*, namely bearing risk (*mukhāṭarah*), protection of wealth, permitting prohibited means (*waṣā'il*) in the absence of the effective

cause (*illah*) of the prohibition, encouraging productive investment, avoiding speculation, possession of commodities and facilitation of procedures. Fāḍil (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-Sharī'ah* vis-à-vis Islamic economics, banking and finance. However, only a few studies attempted to explore the conceptual gaps in understanding of *maqāṣid al-Sharī'ah* vis-à-vis Islamic finance. As for critical studies, Dusuki and Abozaid (2007) raised some issues, namely:

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

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

As to the systematic reviews on the current research topic, Shinkafi and Ali (2017) reviewed 62 articles on *maqāṣid al-Sharī'ah* 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 *maṣlaḥah* by IFIs' Sharī'ah committees in justifying some financial products and services by compromising Sharī'ah principles to maximize profits. Abozaid (2010) addressed the methodology of validating financial products and the misguided justification of Sharī'ah conformity for banking products. He raised and clarified two misconceptions, namely conflict between a perceived *maṣlaḥah* and Sharī'ah texts and overruling prohibitions on the grounds of *darūrah*. Apart from these challenges, some other prevalent misconceptions impede the realization of *maqāṣid al-Sharī'ah* in Islamic finance. There is a dire need to raise such issues and correct the misconceptions to prevent any possible abuse of *maqāṣid al-Sharī'ah*. 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-Sharī'ah* vis-à-vis Islamic finance to explore misconceptions about *maqāṣid al-Sharī'ah* 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 *aḥkām* (provisions) and
- (5) The neglect of *ḍawābiṭ* (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-Fāsī* (1993), *Al-Shāṭibī* (1997) and *Ibn 'Ashūr* (2001) as well as the leading contemporary *maqāṣid* scholars, namely *Al-Būtī* (1973), *Al-Zuhaylī* (1986), *'Atīyyah* (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 *maqāṣid al-Sharī'ah* in Islamic finance.

### Common flaws in understanding *maqāṣid al-Sharī'ah* and financial examples *Distinction between the terms "maqāṣid" and "maṣāliḥ"*

The major challenge faced by some contemporary researchers and practitioners relates to the terms *maqāṣid* and *maṣlahah*. These two terms are perceived as two different principles or legal devices of *Sharī'ah*. 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 *maqāṣid* and *maṣlahah* leads to challenges in comprehending the theory of *maqāṣid al-Sharī'ah* and its application. The same applies to realizing *maqāṣid* 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 *maṣlahah*.

For example, some financial products based on *bay' al-'inah* (sale and buyback), such as *bay' 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 Hāshim, 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 *bay'*. In reality, IFIs are merely financiers that provide funds without taking risks or participating in the investment process. *Bay' al-'inah* here is resorted to as a legal device (*hīlah*) providing a screen for *ribā*-based financing. Yet, as far as the substance is concerned, *bay' al-'inah*-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 Shāfi'ī's view. Yet, they overlooked the legality of the substance by neglecting the conditions set by Imam Shāfi'ī. Despite the existence of *ribā*, IFIs rationalized the products on the basis of *maṣlahah* (*Rosly and Sanusi, 2001*). Here, the flaw in the distinction between *maṣaliḥ* and *maqāṣid* becomes relevant. Some practitioners permitted the products structured by *bay' al-'inah* due to *maṣlahah*, based on the need of the society. However, they forgot that *maṣaliḥ* could not be achieved by overlooking the *maqāṣid*. They neglected the *maqṣad* of avoiding the injustice caused by *ribā* (*Al-Mubarak and Osmani, 2010*). Thus, the assumed distinction between *maṣaliḥ* and *maqāṣid* led to the inaccurate adoption of financial products. Surprisingly, *maqāṣid al-Sharī'ah* have been used here to justify the categorization of such contentious transactions whereas due consideration of *maqāṣid al-Sharī'ah* would be the main criterion to determine their prohibition as they entail injustice resulting from *ribā*.

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

The '*ulamā*' (Muslim scholars) have classified the entire range of *maṣaliḥ*-cum-*maqāṣid* 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*

*Maṣlaḥah* 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 *maṣlaḥah*, 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 *maṣlaḥah*, and everything that leads to the disruption of these foundations is *mafsadah*, and its removal is *maṣlaḥah*. And whenever we mention "intuitive meaning" (*ma'nā makhayyal*) or "appropriate" (*munāsib*) in the chapter of analogy (*qiyās*), we mean by it this type [of *maṣlaḥah*]. And the preservation of these five foundations falls at the level of essentials (*darūriyyāt*), and that is the strongest level of *maṣlaḥah*.

According to *Al-Ghazālī (1413 AH)*, *maqāsid* comprise an integral part of *maṣlaḥah*, 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 (*aḥkām*) of *Sharī'ah* intended by the Lawgiver (*Sharī'*), whereas *maṣlaḥah* denotes the preservation of the goals. Also, the five *maqāsid* could be perceived as the framework of *maṣlaḥah* because it cannot be achieved by neglecting the *maqāsid*.

*Al-Shāṭibī (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-Sharī'ah* in financial activities, *Ibn 'Ashūr (2001)* mentioned five financial objectives, namely circulation, transparency, preservation, durability and equality. These five ends (*maqāsid*) constitute the framework of *maṣlaḥah* in Islamic finance. Financial well-being (*maṣālīḥ*) must be realized within the framework of these five objectives. Thus, the economic activities will comply with the intents of *Sharī'ah*.

#### *Confusion over the levels of maṣālīḥ*

The perception of *darūriyyāt*, *ḥājīyyāt*, *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 *maṣlaḥah* sometimes (*Awang et al., 2014*). Moreover, the *maṣlaḥah* 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 *maṣlaḥah* 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 *ḥājīyyāt*, 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 *bay' al-īnah*, which contain *ribā*, as permissible. For example, over the last two decades, there was a tendency in many IFIs to handily 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 *bay' al-īnah* without fulfilling the contract's conditions that meet *Sharī'ah* principles and objectives. This example applies to those who cite the permissibility of *bay' al-īnah* according to the *Shāfi'ī* School. However, the

Shāfiʿī School only allows *bayʿ al-ʿinah* with certain conditions. If an IFI applies *bayʿ al-ʿinah* 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 *qard ḥasan* (interest-free loan), zakat, charity, etc., to fulfil the need?
- (3) Which of the *maqāṣid* does this product serve?

The need for banking products does not fall under *darūriyyāt* 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 *ḥājīyyāt* if it becomes the sole means of fulfilling one's need, or it may fall under *taḥsīniyyāt*. 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 *maqṣad* of circulation (*rawāḡ*) of wealth which falls under *ḥājīyyāt* (El-Mesawi, 2006). Thus, the need for *ṣukūk* structures neither falls under the *darūrah ʿammah* (general necessity) nor the *darūrah khāṣṣah* (specific necessity). Instead, it falls under *ḥājah*. 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 *ṣukūk* structures may have resulted from confusion over the levels of *maṣāliḥ*. Though the *darūrah* category of *maṣlahah* 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 *ḥajah* category of *maṣlahah*, not *darūrah per se*.

To clarify the categories of *maṣāliḥ*, the *darūriyyāt* (i.e. the first level of *maṣāliḥ*) 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 *maṣāliḥ* (El-Mesawi, 2006). The examples of *darūriyyāt* are the death sentence for a disbeliever who deceives and punishment for an innovator in religion (*muḥtadīʿ fī al-dīn*). Besides, the five pillars of belief (*īmān*), execution of blood money (*diyyah*) and death sentence (*qisās*), marriage, the prohibition of adultery and alcohol are also instances of *darūriyyāt* (Al-Ghazālī, 1413 AH; Al-Būṭī, 1973; Al-Zuhaylī, 1985).

As for *ḥājīyyāt* (i.e. the second level of *maṣāliḥ*), according to Al-Shāṭibī (1997), it includes what is needed to achieve comfort and relieve hardship. If it is neglected, human beings (*mukallafūn*) will undergo hardship and difficulty. Nonetheless, the injury resulted from neglect of this category cannot be equated with that of *darūrī* category. As the instances of the *ḥājī* category, the *uṣūliyyūn* referred to contracts of *bayʿ* (sale), *ijārah* (leasing), *mushārakah* (partnership), *qirāḍ* (speculative partnership) and *musāqāḥ* (sharecropping) (El-Mesawi, 2006).

Concerning *taḥsīniyyāt* (i.e. the third category of *maṣāliḥ*), 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 *maṣāliḥ* are called *mukammilāt*. They are complementary to each of the three levels. The *mukammilāt* are those matters whose absence will not necessarily lead to the destruction of the *maṣāliḥ* of the respective category, albeit the defect of *mukammilāt* causes a defect in the main category (Al-Ghazālī, 1413 AH; Al-Zuhaylī, 1986; Al-Shāṭibī, 1997).

Examples of *mukammilāt* are a witness for a sale contract, pawn (*rahn*), option (*khiyār*), charity out of pure earning, etc (Al-Khādīmī, 2001). Interestingly, due to the hierarchical relationship between the levels of *maṣlahah*, the *maṣlahah* of a lower category plays the role of *mukammil* to another *maṣlahah* of a higher class, i.e. the *taḥsīniyyāt* are complementary for *hājiyyāt*. In contrast, the *hājiyyāt* and *taḥsīniyyāt* are complementary for *darūriyyāt*. 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-Yūbī, 1998; Al-Khādīmī, 2001). Thus, the three levels of *maṣāliḥ* pertain to the means (*wasā'il*) not the ends (*maqāsid*) (Aṭīyyah, 2003).

In connection with the classification of *darūrah*, it is primarily of two types: *darūrah fiqhīyyah* (legal essentials) and *darūrah uṣūliyyah* (jurisprudential essentials). The former is perceived from a *fiqhī* (legal) perspective, is partial (*juz'ī*) and relates to individuals. In contrast, the latter is adopted from an *uṣūlī* (jurisprudential) perspective, is universal (*kullī*) and concerns the whole of humankind. Similarly, *hājah* is of two types: *hājah fiqhīyyah* (legal need), which is private, and *hājah uṣūliyyah* (jurisprudential need), which is public (Ibn Bayyah, 2009).

To differentiate, *darūrah fiqhīyyah* 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 *darūrah* 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 *darūrah uṣūliyyah*, 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-Zuhaylī, 1985, pp. 67–68).

According to Al-Juwaynī (1418 AH), this type of *darūrah* establishes an absolute ruling on a kind, albeit its ruling differs concerning specific persons. For example, the sale is a *darūrah* 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 *darūrah* which results from [the nature of this] type [of transaction] and the existence of the community (Al-Juwaynī, 1418 AH, p. 923; Al-Raysunī, 2006, p. 292).

Thus, *darūrah fiqhīyyah* differs from *darūrah uṣūliyyah*. Furthermore, *darūrah* differs from *hājah* in several aspects such as:

- (1) The hardship in *darūrah* is more than that in *hājah*;
- (2) *Darūrah* originates from what is unlawful by its own sake, or the thing itself is inherently forbidden (*ḥarām li dhātihī*), such as murder, theft and what Allah mentioned in the Qur'ān, whereas *hājah* originates from what is unlawful due to external factors (*ḥarām li ghayrihī*) such as sales with *ribā*. Therefore, selling is permitted, but *ribā* is prohibited;
- (3) The basis of *darūrah* is compulsion (*iljā'*), whereas the basis of *hājah* is ease (*taysīr*); and
- (4) The applications of *darūrah*'s rulings are temporary, whereas the applications of *hājah*'s rulings are continuous (Kāfī, 2004; Ibn Bayyah, 2009).

Besides, *maṣlahah* is different from *darūrah*, albeit it is one of the categories of *maṣlahah*. There is no equipollence (*talāzum*) between *maṣlahah* and *darūrah*, which allows the



promotion of *maṣlahah* at the expense of *ḍarūrah*. Thus, the relation between them is that *maṣlahah* is *ʿamm* (superordinate/hypernym) or macro (*kullī*), whereas *ḍarūrah* is *khāṣ* (hyponym) or micro (*juzʿī*). The *maṣāliḥ* of the *mukammilāt* category also play an important role in realizing each of the categories: *darūriyyāt*, *hājiyyāt* and *tahṣīniyyāt*. The defect of *mukammilāt* causes a defect in the original categories (*aṣl*) of *maṣlahah* (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 (*mafhūm kullī*) and general genre (*ʿumūm al-nawʿ*), not based on the partial (*juzʿī*) and individuals' (*afrād*) perspective (Al-Juwaynī, 1418 AH). This signifies that the five essential *maṣāliḥ* are termed *darūriyyāt* as end goals in their totality for their universality, not for any partial benefit. Al-Ṭufī (1990), Al-Shāṭibī (1997) and Al-Shawkānī (1999) 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 (Kāfi, 2004). Hence, it does not necessarily mean that every *maṣlahah* that incorporates into *ḍarūrah* falls under the same category. Accordingly, the preservation of wealth is the fifth *maṣlahah* 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 *maṣāliḥ*, 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 *mukammilāt*, is not clear to some practitioners. Therefore, they are confused about *darūriyyāt* and *hājiyyāt* in terms of understanding these concepts, their provision (*ḥukm*) and their actualization. The five objectives are exclusively termed the “five universals” (*al-kullīyyāt 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-uṣūl 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 *maṣāliḥ* other than the five objectives (*al-maqāṣid al-khamsah*), be they ends (*maqāṣid*) or means (*wasāʾil*), which fall within *darūriyyāt*; and there are also many universals (*kullīyyāt*) that belong to *hājiyyāt* and *tahṣīniyyāt*. Thus, the five primary objectives are different from other *maṣāliḥ* that fall within the *darūriyyāt* category and the *maṣāliḥ* that belong to *hājiyyāt* and *tahṣīniyyāt* categories, whether they are macro (*kullīyyāt*) or micro (*juzʿiyyāt*) (Al-Būṭī, 1973; Al-Zuhaylī, 1985; Atiyyah, 2003).

As for *ḍarūrah* concerning financial transactions, the safeguard of wealth is *darūrī* 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 *hājiyyāt* and *tahṣīniyyāt*. For example, the circulation of wealth is *darūrī*, 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 *hājiyyāt* level, whereas the prohibition of selling impure objects is considered among *tahṣīniyyāt* (Ibn Bayyah, 2010).

#### *The neglect of aḥkām in realizing maṣlahah*

Understanding the integral relation between *aḥkām* and *maqāṣid* is also a challenge facing IFIs' practitioners. Many perceived a conflict between *aḥkām* and *maqāṣid* (Abozzaid, 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 Piotrowski (2020), and many others. Perhaps, this is one of the reasons behind the neglect of *ahkām* or the overlooking of *maqāṣid* in financial products. There exist examples of neglecting *ahkām* and *maqāṣid* in IFIs' practices; some transactions strictly stick to Sharī'ah principles (*ahkām*) without satisfying the *maqāṣid*. On the other hand, some others resorted to *maṣāliḥ* (analogous to *maqāṣid*), neglecting the Sharī'ah principles. The impact of neglecting *ahkām* is an inaccurate categorization of contracts using *maṣlahah*, as criticized earlier.

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

The correlation of *ahkām* and *maqāṣid* in product development could be understood as follows: suppose a financial institution wants to develop a product based on the objective of "*taysīr*" (ease/facilitation). In that case, it should observe the *ahkām* focussing on *taysīr* and the *ahkām* concerning the contracts that develop a particular product, including all procedures to check whether the *ahkām* allow it. If the *ahkām* 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 Sharī'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-Sharī'ah* nor the purpose of the product.

### *The neglect of maqāṣid parameters*

Neglecting the parameters (*dawābit*) 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" (*ʿiṭbār al-maʿālāt wa al-maʿānī*) as an original objective (*maqṣad aṣlī*) in Islamic finance. He also mentioned some other rules as the auxiliary objectives (*maqāṣid tabʿiyyah*) 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 *darūrah* level, etc. In addition, Al-ʿAskar (1435 AH) mentioned "blocking the means" (*sadd al-dharāʾiʿ*) as one of the *maqāṣid al-Sharī'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 uṣūliyyah*) or juristic methods (*manāhiḥ uṣūliyyah*) to understand and realize the *maqāṣid al-Sharī'ah* (Wūrqiyyah, 2003).

Second, the assumed *maqāsid* is not disciplined (*munḍabit*) 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 (*dawābit*) 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 Shari'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 Shari'ah (namely, religion, life, intellect, offspring and wealth).

To clarify, the *maqāsid* are regulated and determined by certain parameters (*dawābit*). The singular Arabic term *dābiṭ* is defined as "an inclusive (*kullī*) principle, which applies to several details (*juz'īyyāt*) under a particular chapter or group" (Al-Maymān, 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 (*khasā'is*) (Al-Ahmadī, 2016).

The *maqāsid* and/or *maṣāliḥ* are derived from the detailed indicants (*adillah tafṣīliyyah*) of Shari'ah. Hence, *maqāsid* and *maṣāliḥ* 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 Shari'ah are numerous, the *uṣūliyyūn* 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 *maqṣad* or *maṣlahah* neglecting these parameters will be considered alien to Shari'ah (Al-Būṭī, 1973). The parameters of *maqāsid* are legitimacy (*shar'īyyah*), not negating the original indicant, certainty (*thubūt*), rationality (*ma'qūliyyah*), discipline (*indibāt*), generality (*kullīyyah*), constancy (*ittirād*) and not leading to the loss of a greater *maqṣad* (al-Būṭī, 1973; Ibn 'Umar, 2009).

Al-Būṭī (1973), Al-Zuhaylī (1986), Al-Yūbī (1998), Al-Khādimī (2001) and Ibn 'Umar (2009) added, rephrased and expounded the parameters of *maqāsid*. Ibn Harzullāh (2007) classified such parameters according to their functions and reached a total of 16.

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

## Conclusion and recommendations

This paper has made a critical assessment of the contemporary literature on *maqāsid al-Shari'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 *maqāsid* (objectives) refer to underlying purposes behind the provisions of Shari'ah intended by the Lawgiver, whereas *maṣlahah* denotes preservation of the goals. The five primary *maqāsid* constitute the framework of *maṣlahah*. The function of *maqāsid* and *maṣāliḥ* is analogous; they are different only in perspectives; hence, they are sometimes used interchangeably. The three levels of *maṣāliḥ*, namely *darūriyyāt*, *ḥājīyyāt* and *taḥsīniyyāt* pertain to the means (*wasā'il*) to the ends (*maqāsid*). The *darūriyyāt* originated from human survival, whereas the *ḥājīyyāt* stemmed from hardship in human life. Financial products are related to the *ḥājīyyāt* and *taḥsīniyyāt* not *darūriyyāt*. *Maṣlahah* does not necessarily mean *darūrah* but instead comprises *darūrah* as a component. Thus, the relation between *maṣlahah* and *darūrah* is superordination/hypernymy. The former is superordinate/hypernym (*amm*), whereas the latter is hyponym (*khas*), or in other words, the former is macro (*kullī*), whereas the latter is micro (*juz'ī*).

The five primary objectives are called *darūriyyāt* as end goals in totality due to their universality, not for any partial benefit. The five primary *maqāsid/maṣāliḥ* are different from other categories of *maṣāliḥ*, whether they fall within *darūriyyāt*, *hājiyyāt* or *tahsīniyyāt*. Similarly, the means to safeguarding wealth fall into different levels. However, the demand for banking products does not fall under *darūriyyāt*, but rather it may fall under *hājiyyāt* if it becomes the sole means of fulfilling one's need, or it may fall under *tahsīniyyāt*. The *maqāsid* are derived through induction of *ahkām* of Sharī'ah, while *ahkām* are understood in the light of *maqāsid*. *Ahkām* and *maqāsid* stand as the two sides of Sharī'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 *maqāsid* or *maṣlahah* neglecting the parameters will be considered strange to the Sharī'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 *darūriyyāt*, *hājiyyāt* and *tahsīniyyāt*, comprising their classifications, parameters and other details in the English language. The paper also recommends formulating a framework of actualizing *maqāsid al-Sharī'ah* in Islamic finance.

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