

THE IMPORTANCE OF UNDERSTANDING *MAQASID SHARI'AH* IN THE ECONOMIC DEVELOPMENT OF A COUNTRY

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Abstract

This paper presents the importance of understanding Maqasid Shari'ah in a country's economic development. To develop the economy of a country, the government should take into account the aspects of state property acquisition, investment, and expense management which are in line with the requirements of Shari'ah. Furthermore, prevention of bribery, breach of trust, fraud, gambling, hacking, and all kinds of crimes and vices which are prohibited by Islam is also very important and counted as a part of the implementation of Maqasid Shari'ah to advance the national economy, together with the existence of various Islamic financial instruments.

1.0 Introduction

Maqasid Shari'ah is one of the essential elements, which is taken into account in the process of determining the *hukm* (Islamic law) on the current issues. The importance and objective of *Maqasid Shari'ah* is not only limited to the determination of a *hukm* on certain current issues, but it is more wider, and can be used in the development of an Islamic state in order to ensure that its economic, social and political policies are in line with the principles of Islam. Consequently, the application of the elements of *Maqasid Shari'ah* in all aspects of life can promote positive values

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as recommended by the teachings of Islam. The rapidly growing of the world's economic system, especially the Islamic economic system has indirectly stimulated a positive impact on the development of an Islamic country's economic system in the eyes of the world. Thus, given the importance of the application of *Maqasid Shari'ah* in improving the development of an Islamic state, this paper aims to analyze the importance of understanding *Maqasid Shari'ah* in the country's economic development.

2.0 *Maqasid Shari'ah* from the Perspective of *Shari'ah*

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

Imam al-Ghazali gives a meaning to *Maqasid Shari'ah* as a goal to maintain five basic things in human life (*usul al-khams*) namely; preservation of religion, life, intellect, lineage and property.² In this case, any act which is aimed at protecting *usul al-khams* is known as *maslahah* (good), while every act which may harm *usul al-khams* is known as *mafsadah* (damage).³

The verse that indicates *Maqasid Shari'ah* is as follows:

مَا يُرِيدُ اللَّهُ لِيَجْعَلَ عَلَيْكُمْ مِنْ حَرَجٍ وَلَكِنْ يُرِيدُ لِيُطَهِّرَكُمْ وَلِيُنِيبَكُمْ عَلَيْهِمْ نِعْمَتَهُ عَلَيْكُمْ لَعَلَّكُمْ تَشْكُرُونَ

Meaning: "God does not want to impose any hardship on you, but wants to make you pure, and to bestow upon you the full measure of His blessings, so that you might have cause to be grateful".⁴

According to al-Syatibi, *Maqasid Shari'ah* refers to God's command that has set the main goal of His tenets in giving benefit (*maslahah*) to the mankind and avoiding any damage (*mafsadah*) from occurring on them.⁵ He has concluded a discussion on *Maqasid Shari'ah* in the three categories; *dharuriyyat*, *i* and *tahsiniyyat*.

² Mustafa al-Zarqa', *al-Madkhal al-Fiqhi al-Am*, Dar al-Qalam, Damsyik, 1998, j. 1, h. 102

³ Abū Hāmid Al-Ghazālī, (1973), *al-Mustasfā min ʿIlm al-Uṣūl*, Cairo: al-Maktabah al-Tijāriyyah, h: 139-40.

⁴ Surah al-Maidah: verse 6.

⁵ Al-Shāṭibī, Ibrāhīm Ibn Mūsā al-Lakhmī. 2004. *Al-Muwāfaqāt Fī Uṣūl Al-Sharīʿah*. Beirut: Dār al-Kutub al-ʿIlmiyyah.h.24.

Among the contemporary scholars, according to Ibn Ashur, *Maqasid Shari'ah* refers to a purpose and wisdom resulting from the application of most part or the entire Islamic laws.⁶

Al-Raysuni defines *Maqasid Shari'ah* as objectives and effects achieved from the imposition of Islamic rulings whether in general or in detail (for each law).⁷

3.0 Division of *Maqasid Shari'ah*

Maqasid Shari'ah is divided into several categories based on several aspects as follows:

3.1 Based on the Strength of Evidences and Verses or Texts of *Syarak*

Based on this aspect, *Maqasid Shari'ah* is divided into three types:

- a) *Maqāsid Qat'iyah*: the objectives of Islamic law and are believed to be the goals for the imposition of a certain Islamic ruling.⁸ They are the objectives that are understandable from some of the verses of *Syarak* until a high level of confidence is attained for the *mujtahid* to think that it is the purpose of *Syarak* to impose such rulings such as the objective of Shari'ah which is to facilitate and not to give burdens to the people. This objective is achieved through a variety of Islamic texts such as the words of Allah from *Surah al-Baqarah*, verse 185:

يُرِيدُ اللَّهُ بِكُمْ الْيُسْرَ وَلَا يُرِيدُ بِكُمْ الْعُسْرَ

Meaning: *Allah intends for you ease and does not intend for you hardship.*

Another example is from *Surah al-Hajj*, verse 78:

وَمَا جَعَلَ عَلَيْكُمْ فِي الدِّينِ مِنْ حَرَجٍ

⁶ Ibn 'Ashūr, Muḥammad Ṭāhir. 2001. *Maqāsid Al-Sharī'ah Al-Islāmiyyah*. Muḥammad al-Ṭāhir Al-Maysāwī (pnyt.). Ed. ke-2. Amman: Dār al-Nafā'is. h.251

⁷ Al-Raysūnī, Aḥmad. 1995. *Naẓariyyah Al-Maqāsid 'Inda Al-Imām Al-Syātibī*. The International Institute of Islamic Thought, h. 13.

⁸ Ibn 'Ashūr, Muḥammad Ṭāhir. 2001. *Maqāsid Al-Sharī'ah Al-Islāmiyyah*. Muḥammad al-Ṭāhir Al-Maysāwī (pnyt.). Ed. ke-2. Amman: Dār al-Nafā'is. p.232.

Meaning: *He has chosen you and has not placed upon you in the religion any difficulty.*

There are also verses from the Quran and sayings of the Prophet (*Hadith*) which indicate the importance of conveniences and avoidance of hardships which become the goal of *Syarak* in general without being limited to a specific law.⁹

- b) *Maqasid Zanniyyah*: the objectives and purposes of Islamic law derived from a few number of texts (*dalil*) in which the level of confidence like the above stage cannot be attained for the *mujtahid* to make decision. This type of *Maqasid* is mostly obtained through the observation of some Islamic rulings on certain problems until the *mujtahid* attains a high level of confidence to decide on the objectives and purposes of the imposition of Islamic rulings on the problems.¹⁰ One example of this type of *Maqasid* is the relationship enhancement in a marriage between the couple (husband and wife). A detail study of the law (*hukm*) such as the need to take a look at the future wife before marriage, the need to ratify the consent of both bride and groom before the *akad* takes place, the guardian's approval and the dissemination or announcement of the marriage through the feast give confidence to the reviewer or researcher that maintaining the relationship between a husband and wife is one of the objectives and purposes of the legislation.¹¹

- c) *Maqāsid Wahmiyyah*: something that seems to be the objective and purpose of Islamic law, but in reality, it is not the objective and purpose of the legislation like the use of alcohol to gain profit and to attain pleasure. It is contradicting with the objective of Islamic law.¹²

3.2 Based on Its Relationship with Islamic Law

When the Islamic law is fully examined, *Maqasid Shari'ah* can be divided into three types, namely:

⁹ Al-Najjār, °Abd al-Majīd. 2008. *Maqāsid Al-Sharī'ah Bi Ab'ād Jadīdah*. p.38. Ibn °Āshūr, p.235.

¹⁰ Ibid.

¹¹ al-Najjār, p. 39.

¹² Ibid, 40.

- a) *Maqāṣid ʿĀmmah*: the objectives and purposes of most of the Islamic rulings such as the objective to facilitate and avoid complication, the objective to preserve and maintain the system of the human life so that it becomes more systematic, and also the objective of a human being as the inheritor or ruler (*khalifah*) of the earth. Islamic laws as a whole, either directly or indirectly aim to achieve and maintain the objectives above.¹³
- b) *Maqāṣid Khāṣṣah*: Islamic objectives to be achieved by a group of law in particular such as the objectives of the Islamic law related to property, family or punishment. Each group of law has its own objectives and goals.¹⁴
- c) *Maqāṣid Juzʿiyyah*: objectives and goals to be achieved by each individually Islamic law such as the ban on alcohol, gambling and proposed to women who have been engaged. Each one of these laws has its own objectives and goals to be achieved. This type of *Maqasid* is also known as the wisdom, secret of *Syarak* and *ʿillah*.¹⁵

3.3 Based on a Group of People

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

- a) *Maqāṣid ʿĀmmah*: the objectives and purposes of Islamic legislations that provide benefits to the entire mankind such as mutual assistance, justice and equality.
- b) *Maqāṣid Khāṣṣah*: the objectives and purposes of the Islamic legislation relating to certain groups of people such as the objectives relating to penalties. It only provides benefits to the wrongdoing.¹⁶

3.4 Based on the Level of Islamic Rulings (*hukm*)

Not all Islamic laws are at the same level. Therefore, the objectives and purposes of the legislation are also on different levels as follows:

¹³ Ibid.

¹⁴ Ibid, 41.

¹⁵ Ibid, 42.

¹⁶ Ibid, 44.

- a) *Maqāṣid Uṣūl*: the objectives and original goals to be achieved by the Islamic legislation through the imposition of the laws such as the objective of protecting life and justice as well as the objective of providing convenience.
- b) *Maqāṣid Wasā'il*: the side objectives and goals of Islamic laws, which aims to achieve and maintain its primary objective, such as having a witness in a marriage contract that aims to maintain the objective of strengthening a marriage relationship between the couple (husband and wife).¹⁷

3.5 Based on Human Needs

There is a certain thing that human and *Syarak* needs, thus making it as an objective of the imposition of the Islamic law. Based on the human needs, *Maqasid Shari'ah* can be divided into three types:

- a) *Dharuriyyat* (fundamental needs). It refers to the most important and fundamental and basic needs in the life of a human being and when these needs are not met, or not available, then his or her life will be destroyed in this world as well as in the hereafter. For example, the human need for food, shelter and clothing.
- b) *Hajiyyat* (necessity). It refers to the needs that facilitate the life of the world and the hereafter. If these needs are not met, it just bring hardships and difficulties in life but it will not destroy the life. For example, the human need to use a transport to go to a specific destination.
- c) *Tahsiniyat* (embellishment and comfort). It refers to any form of additional needs that aim to achieve comfort and fulfillment in people's lives. If these needs are not met, it does not affect the lives of the people at all. This need is the result of both habits and unlimited wants of the people who always dreamed to have the best things in their life. Examples of

¹⁷ Ibid, 45.

these needs are the desire to have a transport of variety of colours and shapes, a large and spacious house and so on.¹⁸

4.0 THE IMPORTANCE OF MAQASID SHARI'AH IN THE ECONOMIC DEVELOPMENT OF A COUNTRY

Maqasid Shari'ah in a country's economic development is closely related to the acquisition, maintenance, management, expenditure, and also distribution of wealth.

4.1 The Ways to Acquire Wealth in Islam

In Islam, the wealth can be acquired in *Halal* ways through some of the methods as mentioned below:

1. *Mu'awadah* Contract (The Contract of Exchange) such as sale and purchase, rentals, and wages to jobs and services.
2. *Tabarru'* Contract (Gratuitous Contract) such as awards, charity, donation, bequest, endowment and loans.
3. Estate inheritance.
4. The growth of the existing assets such as the increasing of the livestock.
5. Acquire allowable natural resources such as firewood in the forest, water in the river or fish in the sea.

4.2 Maqasid Shari'ah in the Aspect of Property Protection (*Hifz Mal*)

Property protection is one of the basic principles outlined under the *darūriyyah* category. Naturally, *Maqasid Shari'ah* which aims to preserve and promote the social order of the community pays a great attention to the wealth and property protection. There are some evidences from the *Quran* and *Hadith* that encourage the acquisition of property and wealth as well as their protection in the *Shari'ah*.

¹⁸ Ibid, 47.

Property is a crucial thing that is needed by all communities, regardless of religion and ethnicity. In Islam, the property should be preserved and maintained by avoiding any illegal method of acquisition. In order to increase and expand the property, it must be invested and cannot be wasted or left.

The objective of property protection is closely related to the protection of religion because religious tenets or *hukm* have provided a set of ways to deal with property including its revenue and expenses. It is also closely related to the protection of intellect as the condition for a validity of a transaction contract depends on the maturity of the contracting party.

In the context of the objectives of *Hifz Mal*, Islamic scholars have pointed out that the preservation of wealth or property is achieved at least through multiple dimensions, namely:

(a) The Continuity of Investment and Development of the Property

In the context of the modern world, the wealth of a nation is judged by the Gross National Income (GNI), which comprises of all the values produced within a country, namely the Gross Domestic Product (GDP), together with the incomes received from the other countries minus the liability payments. The wealth of a country can be judged from the average income per capita of the population, which is the amount of money a person would receive if the yearly national income is divided among the population evenly.

The development of the human life not only covers their basic needs, but also involves the improvement of living standards. This aspect requires a growth of resources. Therefore, existing assets should be invested so that profits can be generated and the various projects that improve people's lives can be launched. Investment activity is capable of producing potential, capital, resources and new businesses. Therefore, this activity should be accompanied by numerous number of investors and various mechanisms also need to be generated. Investment instruments also need to be developed so that the capital can be utilized effectively.

Muslims are required to work hard, strive with knowledge and energy to obtain sustenance and bounty of God, improve their lives and achieve success. The success is attributed to our continuous efforts while not ignoring the religious aspect and making sure that the efforts are compliance with the rules and prohibitions of Islam. As Allah says:

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ وَاذْكُرُوا اللَّهَ كَثِيرًا لَعَلَّكُمْ تُفْلِحُونَ

Meaning: “And when the prayer has been concluded, disperse within the land and seek from the bounty of Allah, and remember Allah often that you may succeed”.¹⁹

Indirectly, it can be seen that *Maqasid Shari‘ah* invites people to maximize the utilization of the existing resources and capitals to improve the standard of living and prosper the earth as well as help those who are in need. *Quran* and *Hadith* forbid people from begging without initially making use of the existing capital resources in any form of goods, labor or owned physical to seek the revenues and explore the nature in searching the God’s bounty.

The need for a Muslim to pay zakat in fact is closely related to the need to increase the wealth. This is clearly stated in the *Hadith* narrated by Anas RA:

اتجروا في مال اليتامى لا تأكلها الزكاة

“Do business (develop) with the property of orphans so that it is not eaten by zakat”.²⁰

The scholars have a dispute regarding the obligation of *Zakat* on the property of orphans, whether it should be paid by the guardian or having to wait for the orphans to reach the age of puberty. Obviously, the above *hadith* recommends to develop the property of the orphans. The profits can occur in several ways such as through business or investment in Islamic financial instruments that is compliance with the *Shari‘ah*.

(b) Justice to the Contracting Parties

¹⁹ *Surah al-Jumu‘ah*, verse 10.

²⁰ Al-Asqalani, Ahmad bin Ali, Al-Talkhis al-Habir, Muassah Qurtuba, 1995. http://library.islamweb.net/newlibrary/display_book.php?flag=1&bk_no=11&ID=542.

The Islamic financial system inculcates the principles of justice in the property ownership of all parties. Justice to the contracting parties is very important for a healthy economic activity. *Maqasid Shari'ah* aims to avoid any conflict, dispute and animosity between the parties that deal in financial affairs. Therefore, Muslims are very concerned about the mutual consent between the two parties in trading activities because both parties have the right to find their needs, fulfill each other's needs, and avoid loss or damage.

All contracts in Islamic financial system have their own pillars and conditions to be fulfilled. The principles and conditions prescribed by Islam are to protect the interests of all parties involved in the contract.

Thus, *Shari'ah* encourages the practice of recording, having a witness and also establishment of certain conditions in transactions such as *murabahah*, *mudarabah* and *musyarakah* contracts. Such conditions are very important and any breach of these conditions can cause the contract to be invalid. The concept of wealth and property protection from risks can be seen in *surah al-Baqarah*, verse 282:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَىٰ أَجَلٍ مُّسَمًّى فَاكْتُبُوهُ وَلْيَكْتُب بَيْنَكُمْ كَاتِبٌ بِالْعَدْلِ وَلَا يَأْب كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ

“O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write (it) between you in justice. Let no scribe refuse to write as Allah has taught him.”

The following verse:

وَلَا تَسَامُوا أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَىٰ أَجَلِهِ ذَٰلِكُمْ أَفْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَىٰ أَلَّا تَرْتَابُوا إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ أَلَّا تَكْتُبُوهَا

“And do not be too weary to write it, whether it is small or large, for its specified term. That is more just in the sight of Allah and stronger as evidence and more likely to prevent doubt between you, except when it is an immediate transaction which you conduct among yourselves. For (then) there is no blame upon you if you do not write it.”²¹

²¹ *Surah al-Baqarah*, verse 282.

This verse clearly enjoins Muslims to record debts in the business and also take witnesses. This prevents the possibility of the existence of a party that denies indebtedness, amount of debt, and duration of debt maturity of which can lead to conflicts and losses as well as injustice for the contracting parties. If the transaction happens during the course of a trip and the record of the transaction cannot be taken, Allah allowed the taking of a collateral (*Rahn*) as a security for the debt.

To ensure justice to both contracting parties, the elements of denying approval, injustices to the contracting parties, abuse of power, transacting by force, fraud, and corruption are prohibited. Allah says:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدُلُّوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

*“And do not consume one another's wealth unjustly or send it (in bribery) to the rulers in order that (they might aid) you to consume a portion of the wealth of the people in sin, while you know (it is unlawful)”.*²²

(c) Transfer of Ownership Legality

This *Maqasid* is based on the emphasis of *Shari‘ah* on the importance of a legitimate ownership because it is closely related to the validity of *tasarruf*. This is in line with the words of God:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

²² *Surah al-Baqarah*, verse 188.

*“O you who have believed, do not consume one another's wealth unjustly but only (in lawful) business by mutual consent. And do not kill yourselves (or one another). Indeed, Allah is to you ever Merciful.”*²³

Even the Prophet S.A.W also prohibits Muslims to sell something that they do not own. In terms of the transaction, *Shari'ah* is very concerned about the aspects of *qabdh* (holding) and *taslim* (delivery) of goods in each transaction, and the approval of the contracting parties. The maturity of mind or intellect (*'aql*) and the ability to understand the impacts and consequences of the contract are the primary conditions for the validity of the contract. It is called a legal capacity (*ahliyyah al-ada'*). Because the protection of property is related to the intellect protection, it can be concluded that the objective of *Shari'ah* in Islamic finance is closely related to the protection of intellect.²⁴

Each transaction activity in Islam should contribute to the legitimate ownership of a property. The ownership of a property is established when it was done based on the demands of *Shari'ah*. Allah says:

عَلِمَ أَنْ سَيَكُونُ مِنْكُمْ مَرْضَىٰ وَآخَرُونَ يَضْرِبُونَ فِي الْأَرْضِ يَبْتَغُونَ مِنْ فَضْلِ اللَّهِ وَآخَرُونَ يُقَاتِلُونَ فِي سَبِيلِ اللَّهِ

*“He has known that there will be among you those who are ill and others traveling throughout the land seeking (something) of the bounty of Allah and others fighting for the cause of Allah”.*²⁵

Legal ownership is very important in ensuring the validity of *tasarruf* on the property, as well as the determination of entitlement to benefits and risk bearing. This is consistent with the jurisprudence:

"الغرم بالغنم"

Meaning: “Acquisition comes with the assumption of risks (ownership)”.

²³ *Surah al-Nisa'*, verse 29.

²⁴ Mohamad Akram Laldin. (t.t), *op.cit.*, h. 6.

²⁵ *Surah Muzammil*, verse 20.

Only the rightful owner can have the freedom to do *tasarruf* such as to sell and buy the owned property, but at the same time, he will bear the risks such as the damage or decrease in the price of the asset.

(d) The Circulation of Property (*rawaj al-amwal*)

The concept of property circulation and justice in Islam should be hovering in the community through the mechanisms and the right way so that the national wealth is not only enjoyed and controlled by a handful of community members only. Monopolies are not allowed by law. Allah says:

مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

“And what Allah restored to His Messenger from the people of the towns - it is for Allah and for the Messenger and for (his) near relatives and orphans and the (stranded) traveler - so that it will not be a perpetual distribution among the rich from among you”.²⁶

Shari'ah emphasizes on the achievement of this objective so that the public can participate in the financial activities and prevent the accumulation of wealth to certain groups of people only. This is to ensure the circulation of the property will continue and not stay idle. As Allah says:

مَا أَفَاءَ اللَّهُ عَلَى رَسُولِهِ مِنْ أَهْلِ الْقُرَىٰ فَلِلَّهِ وَلِلرَّسُولِ وَلِذِي الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينِ وَابْنِ السَّبِيلِ كَيْ لَا يَكُونَ دُولَةً بَيْنَ الْأَغْنِيَاءِ مِنْكُمْ

“And what Allah restored to His Messenger from the people of the towns - it is for Allah and for the Messenger and for (his) near relatives and orphans and the (stranded) traveler - so that it will not be a perpetual distribution among the rich from among you”.²⁷

Rasulullah S.A.W narrated in a *Hadith*:

عن معمر أن النبي (ص) قال: " من احتكر فهو خاطئ". أي: فهو بعيد عن الحق والعدل. رواه مسلم.

²⁶ Surah al-Hasyr, verse 7.

²⁷ Surah al-Hasyr, verse 7.

Meaning: “From Ma'mar, the Prophet has said; whoever monopolized goods (*ihtikar*), then he has made a mistake. It is far from the truth and justice”.²⁸

This objective is aimed to bring peace and prosperity to the community. Thus, *Shari'ah* requires the obligation to perform charity and *infaq*. The hoarding of wealth is also prohibited by the *Shari'ah*. In addition, *Shari'ah* also encourages the application of various contracts and financial activities that invite to share resources or capital and money transfers like *Musharaka* and *Mudaraba*. Then, adapting financial measures such as *Zakat* is also important to maintain a balanced society and provide a continuous source of income to the lower class people.

Giving *Zakat* and alms has attained the goals of the property circulation among the people of the community. To facilitate the circulation of the property through businesses, some forms of contracts which contain a small *gharar* (*yasir*) is acceptable, such as *mugharasah*, *salam*, *muzara'ah* and *qiradh*.

The basic aim of *Shari'ah* is to meet the basic needs of every member of the society. Thus, the overall prosperity and wealth generated must be distributed fairly in the society. Therefore, economic and financial activity may not only focus on generating profits, but rather should also focus on the social justice and social welfare. Islamic economics and finance must eradicate the practice of caste in the society to reduce the economic gap between them. Therefore, more microfinance services need to be offered by the Islamic financial institutions in addition to being a close friend to the community in finding the best solution to their financial problems.²⁹

The concept of the circulation of property in Islam is that it has to be used by all levels of society. The property is not to be hidden or frozen without utilizing its benefits. Islam encourages the proliferation of the property like through the application of investment instruments which can meet the needs of the Muslim community. Allah says:

²⁸ *Musnad Ahmad*, 2:351, no. 8602, (in al-Maktabah al-Shāmilah).

²⁹ Mohamad Akram Laldin. (t.t), *Maqasid Shariah as the Basis of a Just Economic System*. Access from website www.wadah.org.my, on 12 November 2012, p. 5.

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّ كَثِيرًا مِنَ الْأَحْبَارِ وَالرُّهْبَانِ لَيَأْكُلُونَ أَمْوَالَ النَّاسِ بِالْبَاطِلِ وَيَصُدُّونَ عَن سَبِيلِ اللَّهِ وَالَّذِينَ يَكْنِزُونَ الذَّهَبَ وَالْفِضَّةَ وَلَا يَنْفِقُونَهَا فِي سَبِيلِ اللَّهِ فَبَشِّرْهُمْ بِعَذَابٍ أَلِيمٍ

“O you who have believed, indeed many of the scholars and the monks devour the wealth of people unjustly and avert (them) from the way of Allah. And those who hoard gold and silver and spend it not in the way of Allah - give them tidings of a painful punishment.”³⁰

Freezing the asset or property is strictly prohibited in Islam because it blocks the circulation of wealth among the community. Wealth resulting from lawful efforts must be circulated among the crowd (not a few) because a well spent wealth will generate a new wealth which will benefit the society. Mechanisms of the circulation and distribution of wealth in Islam are intended to give benefits to the people while safeguarding the rights of the people in the society, particularly the poor and vulnerable one.

(e) Transparency and Openness in Commercial Activities (*wuduh al-amwal*)

Commercial activities should be free from any elements that could lead to conflict, strife, and disadvantages. Also, the contract which has defaults in its clarity is forbidden in Islam. Allah says:

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَن تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

*“O you who have believed, do not consume one another's wealth unjustly but only (in lawful) business by mutual consent. And do not kill yourselves (or one another). Indeed, Allah is to you ever Merciful”.*³¹

To achieve this objective, each contract that involves the transfer of financial affairs or property (*huquq maliyyah*) must have the agreement of both contracting parties. The contents of the agreement in the document should be clear in stating the conditions that must be fulfilled and they must be valid from the legal point of Islam and civil. Allah says:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

³⁰ Surah al-Taubah, verse 34.

³¹ Surah an-Nisa', verse 29

“O you who have believed, fulfill (all) contracts”.³²

5.0 MAQASID SHARI‘AH AND ITS ROLE IN THE DEVELOPMENT OF ISLAMIC ECONOMICS

Maqasid Shari‘ah can only be realized through the adherence to the Islamic rules and avoidance of the prohibition things according to the Islamic rules. The Islamic financial system must obey the commandments of *Syarak* including the terms and pillars of each contract. At the same time, it must also avoid a contract that has a purpose on the prohibited and illegal things.

5.1 The Role of *Maqasid* to Stimulate Economic Growth and Development

Economic growth is closely related to the agricultural, industrial, manufacturing, services, finance, import and export sectors as well as Forex trading. It is essential in the formulation of the national policies to take into account the current needs and priorities of the people based on *daruriyyat*, *hajiyyat* and *tahsiniyyat* concepts without neglecting certain sectors. For examples, if the agricultural sector is neglected, it will lead the country to rely on foreign countries for food supplies.

The concept of putting the priorities first is known as *fiqh aulawiyyat*. Like *maslahah*, which is divided into *dharuriyyat*, *hajiyyat* and *tahsiniyyat*, the same approach should be taken by the government. The basic human needs for food, medicine, education, safety, and residence are the necessities needed by the people. Life will be very difficult in the absence of this fundamental needs.

The examples of *hajiyyat* like the transaction facilities, employment opportunities, having access to the various services and current needs, transportation and others can be considered as the *hajiyyat* needed to facilitate and increase the living standards of the people.

Tahsiniyyat refers to the level of comfort and luxury. For example, the constructions of the elite schools, mosques and some government departments, which are very costly, as well as the constructions of highways and bridges, which sometimes are too "fancy" and wasteful. There must

³² *Surah al-Maidah*, verse 1.

be a balance in the spending by taking the priorities first to ensure the circulation of the wealth among the people goes smoothly and efficiently.

Because of the failure in understanding *Maqasid Shari'ah*, there are priorities that are not being put first. For example:

1. In terms of employment, there are recruitment of foreign workers without control and empirical studies done regarding the need for foreign workers. Many foreign workers are working illegitimately in our place, while local people are losing their jobs. If there is a good salary package given to the local workers, they will certainly be interested to work. The government has to study the side effects of the outflow of the local currency, social problems, crimes, and corruptions which are increasing and imposing a bad impact on the economy.
2. In terms of household debts, Malaysia is among the countries that face severe household debts. There are many debtors and also people who like to take debts. The nation's agendas must include how to keep people free of debt at an early age before retiring.
3. In terms of property ownership, the price of the house and land is too expensive compared to the ability of the public to pay. The government should give priority to the first-time homeowners, and charge a premium to the owners of second homes and up. The neighbour country, which is Singapore is applying this rule. With this rule, the issue of speculation and increases of price can be avoided. This is in line with *dharuriyyat* and *hajiyyat* as emphasized by *Maqasid Shari'ah*.
4. In taxation, a study needs to be done regarding the ways and forms of taxation to become more effective, transparent and reliable based on the actual needs of the countries on the basis of *dharuriyyat* and *hajiyyat* rather than luxuries. It is very important that there are no underdogs or victims of circumstances.

5.2 The Role of *Maqasid* in Handling *Riba*

Riba is forbidden in Islam. Anyone who declares *riba* is lawful will be *Kufr* and out of Islam, because it is one of the greatest sins that must be avoided by a Muslim. The ban is clearly mentioned in the *Quran* and *Sunnah* as Allah says:

وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا

“Allah has permitted trade and has forbidden interest”.³³

Riba literally means addition or fertile. *Riba* is the payment of debt in a higher amount due to the late payment. It also means the exchange of *Ribawi* goods in which the goods of the same type is exchanged at different rates or the exchange of *Ribawi* goods which share the same ‘*illah*’ such as a gold with a silver in the event of delay in the delivery. This is known as *riba al-Buyu*’, which is in a transaction.

The common type of *riba* is the payment of debt in a higher amount due to the late payment. In *Surah al-Baqarah*, verse 289, it is stated that Allah and Prophet combat those who takes *riba*. Allah says:

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذُرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنْتُمْ مُؤْمِنِينَ فَإِن لَّمْ تَفْعَلُوا فَأْذَنُوا بِحَرْبٍ مِنَ اللَّهِ وَرَسُولِهِ وَإِن تُبْتُمْ فَلَكُمْ رُءُوسُ أَمْوَالِكُمْ لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ

“O you who have believed, fear Allah and give up what remains (due to you) of interest, if you should be believers. And if you do not, then be informed of a war (against you) from Allah and His Messenger. But if you repent, you may have your principal – (thus) you do no wrong, nor are you wronged”.³⁴

In carrying out the Islamic financial activities, the practice of *riba* should be avoided completely. Each activity must be conducted in accordance with the Islamic rules, and must be independent from any form of *riba* whether in capital gaining, savings and investments activities and other related activities.

³³ *Surah al-Baqarah*, verse 275.

³⁴ *Surah al-Baqarah*, verses 278-279.

As an alternative to *riba*, Islamic banking is established. It earns profits through sale contracts, rental payments, wages for services and other activities that are *Shari'ah* compliant.

One type of *riba* in the current transaction is the *riba* related to the insurance that involves an exchange of premiums. For examples, a monthly premium of RM100 is exchanged with a benefit of RM30000. In this case, money is exchanged with money at different rates and value. As an alternative to the insurance that involves *gharar* and gambling, *takaful* is established.

The concept of *takaful* is built on the principle of *ta'awun* (mutual help), *tadhamun* (mutual guarantee), and *takaful* (to bear) which are translated into the concept of *tabarru'*. Through the principle of *tabarru'*, the customers, which are known as the *takaful* participants are not simply looking for their protection only. Instead, the *takaful* participants based on the principles are agreed to make a contribution in the form of money which will be used to help each other if any of the participants in the *takaful* scheme are having an unexpected bad event in the future. Therefore, it will not oppress the participants because everyone will get the same treatment.

Another example in the application of Islamic financial system is the contract of *Qard*. *Qard* intends to provide property loans to the parties that will benefit the property and the party will pay back the loans with the same type of property. *Qard* contract is a form of contract that is adopted for the purpose of liquidity management of Islamic finance instruments. Such products are important to meet the national needs for managing liquidity. This contract requires the borrower to return the borrowed money to the lender without promising any additions. However, in the current practice, the borrower sometimes voluntarily provides grants to the lenders while paying off the debts. Grants by the borrower to the lender are encouraged in Islam, but the grant cannot be the one of the requirements of the contract because it can lead to *riba*.

Any additions to *Qard* when the repayment takes place either in terms of the rates, natures, assets or benefits given are encouraged as long as they do not become the conditions. The *hukm* of giving grants to the lender is the same as the *hukm* of a loan that involves benefits, which is prohibited if the grants are stipulated by the contract, but is allowed if the grants are given unconditionally. To pay the debt with the additional benefit is encouraged if it does not become the requirement of the contract and as long as it does not become a real *`urf*. However, if it becomes

common and is practiced because of a debt, then it has to be abandoned because *`urf* is the same as a condition.

The obedience to the specific transaction rules and laws can attain the objectives of *Maqasid Shari'ah* in the property protection such as taking the additions in a lawful way that is in line with *Shari'ah* without any oppression and injustice as in the *riba* activities.

5.3 The Role of *Maqasid* in Avoiding *Haram* and Non-Beneficial Investments

In line with the objectives of *Maqasid Shari'ah* in property protection, this paper suggests that the government has to ensure that there is no investment made on activities which are non-*Shari'ah* compliant or have no benefit to the country. The government should also introduce various regulations and policies to curb illegal and non-profitable investment activities.

For the individual, someone who is investing in the investment funds that are not beneficial or useless is same like disposing the property which will not benefit him/her and others. In the era of globalization, many investments contribute to the activities of non-*Shari'ah* compliant, such as alcohol businesses, conventional banking and insurance, tobacco productions, porn films industries and immoral activities which then give a bad impression and bring destruction to the community.

Recently, there are many types of get-rich-quick schemes that are based on fraud and usury (*riba*), which take the property of others deceitfully by using a variety of platforms. Some use the businesses of gold, catfish, real estate, hotel reputedly in Mecca, food goodies and so on. Many people are deceived because of their greed to the highly monthly returns. There is also an addiction in which no matter how many times they are being cheated, they are still looking for a new program that has the same modus operandi.

In Islamic financial system, any activity which is contrary to *Shari'ah* is prohibited. Therefore, any investment activity will undergo screening and monitoring process to identify whether it is *Shari'ah* compliant or not. The investors are only allowed to invest their assets in *Shari'ah* compliant activities. The Securities Commission has also set a benchmark for *Shari'ah*

compliant investment activities that are permissible. This can be evidenced by the issuance of Shari'ah benchmarks to determine the *Shari'ah* compliant companies and the investors are encouraged to invest in the companies.

The supervisory of *Shari'ah* also emphasized on screening process of financing facilities and *takaful* protection. Funding will not be given to the non-*Shari'ah* compliant activities or companies or institutions that do not comply with *Shari'ah*. In addition, the *takaful* protection covers only the risks that are *Shari'ah* compliant.

Illegal procurement of goods due to the non-*Shari'ah* compliant transactions and investments must be cleared either by returning the goods to the owner or seller or by distributing them to *Baitul Mal* or charities. The formulation of regulations, laws and punishment for non-*Shari'ah* compliant activities is also in line with the objectives of *Maqasid Shari'ah* in the aspect of property protection.

5.4 The Role of *Maqasid* in Dealing with Bribery

Bribery or *risywah* is defined literally as a connector that can attain the goal with goods or kickback properties. Islam strictly prohibits the practice of bribery because it is one of the characteristics of tyranny and oppression that can lead to the destruction of a government or state. Allah says:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْءُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

“And do not consume one another's wealth unjustly or send it (in bribery) to the rulers in order that (they might aid) you to consume a portion of the wealth of the people in sin, while you know (it is unlawful)”³⁵

³⁵ *Surah al-Baqarah*, verse 188

Hadith of the Prophet has explained that both the giver and the receiver of a bribery will be put into hell.

عن عبد الله بن عمرو: أن رسول الله صلى الله عليه وسلم قال: "لعنة الله على الراشي والمرتشى."

*From Abdullah bin Amru, Rasulullah SAW has said: "Allah cursed both the giver and the receiver of a bribery"*³⁶

Clearly, both giving and receiving a bribe are sins. In the modern society, the practice of bribery seems to be widespread and accepted on the reason of gifts. Thus, the teachings of Islam has totally prohibited the practice of bribery without a compromise because of the serious negative effects on the individual, society, religion and also country.

The Islamic financial system is carried out with full transparency and openness (which is a specific *Maqasid* of a transaction), where there is a supervisory body that will control and administer the system with comprehensive guidelines and unique risk managements. In addition, it adheres to the responsibilities and duties of the fiduciary plus the rights of the parties involved are guaranteed. Furthermore, this system emphasizes on a clear documentation process as well as the transparency of the underlying contracts. Legal provisions for combating bribery practices as well as transparent and fair enforcements must be implemented because one of the demands of *Maqasid Shari'ah* is to combat bribery practices. It is one of the ways to protect the property, especially public property.

6.0 Conclusion

Maqasid Shari'ah is the objective to be achieved by *Syarak* in all levels of *hukm* whether in general, specific or *juz'i*. The determination of a *hukm* based on *Maqasid Shari'ah* means the determination of a *hukm* based on the objectives which are believed to be the requirements of *Syarak* through the compilation of specific texts from *Syarak*. *Maqasid Shari'ah* should be taken into account when determining the *hukm* of a new particular case to ensure that it is not contrary

³⁶ Riwayat Tarmizi, Abu Daud, Ibn Majah dan Ahmad. *Sunan al-Tarmizi al-Ahkam*, no. 1337, *Sunan Abu Daud al-Aqdi'ah*, no. 3580, *Sunan Ibn Majah al-Ahkam*, no. 2313, dan *Musnad Ahmad bin Hanbal*, v. 2, no. 190.

to the *Shari'ah*. The use of *Maqasid Shari'ah* is not limited to the determination of a *hukm* of the problems and current issues, but it also can be used in the formulation of a country's policies in all fields and sectors.

To develop the economy of a country, the government should take into account the aspects of state property acquisition, investment, and expense management which are in line with the requirements of *Shari'ah*. *Maqasid Shari'ah* which is embodied in the commandments and prohibitions, lawful (*halal*) and unlawful (*haram*), principles of *Shari'ah* in Islamic economics and finance is intended to safeguard the interests of people in this world and the hereafter. In reality, there are many ways and means to acquire property and maximizing revenue for lawfully compared to unlawfully. Economic and financial position will be strong and stable through the application of *Maqasid Shari'ah*. It can be realized through the enhancement of efforts to develop the country's economic activities with the continued development and production together with the existence of various Islamic financial instruments. Prevention of bribery, breach of trust, fraud, gambling, hacking, and all kinds of crimes and vices which are prohibited by *Syarak* is also very important and counted as a part of the implementation of *Maqasid Shari'ah* to advance the national economy.

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