

The Future of Islamic Finance: A Reflection Based on *Maqāṣid al-Sharīʿah*

Mohamad Akram Laldin*

akram@isra.my

Hafas Furqani**

hafas@isra.my

Abstract

The timely emergence of Islamic finance as a system of thought and practice amidst world crisis and uncertain proposed solutions may offer a coherent perspective for understanding real economic problems and alternatives to the very foundations of how economics and finance should be managed to actualise human prosperity. Despite its impressive development, the question whether Islamic finance is on the right track to realise the hopes pinned on it at the time of its initial establishment currently emerges. This article attempts to reflect on the nature of the development of Islamic finance, as well as its achievement and future direction. For Islamic finance to really progress, it should be developed with the agenda of realising the objectives of Shari'ah (*maqāṣid al-Sharīʿah*) as well as its full potential as a system, not as a stopgap means of surviving the crisis,

* Assoc. Prof., Executive Director, International Shari'ah Research Academy for Islamic Finance (ISRA), Lorong Universiti A, 59100 Kuala Lumpur, Malaysia. For this article, Dr. Akram acted as a project leader and author of outline as well as parts three and four.

** Ph.D., Researcher, ISRA. Dr. Hafas acted as researcher and compiler of materials as well as author of parts one and two.

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nor as a legal (*ḥalāl*) means in financial dealings that satisfy the minimum standard of legal requirements. Furthermore, it should provide guidelines for managing a good economy, stimulating growth and development, realising socio-economic justice, and promoting employment and stability.

Keywords

Islamic banking and finance, *maqāṣid al-Sharīʿah*, systemic approach, legalistic approach, foundations, meaningful development, direction.

Introduction

Islamic finance attempts to introduce Shariʿah principles in modern financial practices. The industry has grown considerably and has a global reach. Such a trend is not only triggered by the fact that the banking and finance operation is now satisfying the Islamic legal requirements (Shariʿah compliance), but also because of the objectives and values it promotes. Islamic finance brings the Islamic visions of economy in the financial sphere to realise human well-being as well as a just and fair order of society. Such objectives are summed up in the concept of *maqāṣid al-Sharīʿah*.

Adherence to *maqāṣid al-Sharīʿah* as the objectives of Islam is not only important, but necessary in developing genuine and indisputable “Islamic” finance. The “Shariʿah compliance” term carries the expectation of a financial system and practices that are truly based on all the tenets of Shariʿah—namely, the beliefs and faith (*ʿaqidah*), Shariʿah rules (*aḥkām al-sharʿiyyah*) and ethics (*akhlāq*)—and serve the noble goals prescribed by Shariʿah (*maqāṣid al-Sharīʿah*). Recent growing interest in the objectives of Shariʿah and their application in the Islamic financial industry however reveals that not only is mere fulfilling of the minimum legal requirement (Shariʿah compliance) insufficient but more efforts are needed to realise

Islam's objectives and visions in the economic and financial sphere, particularly in regard to ethics and social development agenda. Hence, this article attempts to discuss such issues by exploring the goals of Shari'ah, which signify the philosophy and goals that Islam propagates in establishing an Islamic financial system, and how the industry could be guided in achieving and realising them.

Islamic finance direction: Understanding the landscape

Islamic Finance is a progressive industry. Not only is it rapidly developing in the Muslim countries but it is also penetrating into the Western world and is now progressing into global integration. The demand for Islamic financial services has increased tremendously. Based on the *World Islamic Banking Competitiveness Report 2011-2012*, global Islamic banking assets reached USD1.1 trillion in 2012 while the global gross Takaful contributions achieved USD7 billion in 2009, and continued to boast healthy growth to gain USD12 billion in 2011.¹ The Global Sukuk Issuance in 2012 increased to USD140 billion from USD84.4 billion in 2011 and was just USD52 billion in 2010.²

The main driver behind this is the Shari'ah principle which requires that financial activities—such as contract stipulation—be operated according to Islamic rulings, offers a variety of contracts, and allows dynamism and flexibility in product development and innovations. The dramatic expansion might be seen as a success story, demonstrating to the world that Islam and the Shari'ah can contribute positively

1. Ernst & Young, *The World Islamic Banking Competitiveness Report 2011-2012*, available at http://www.zawya.com/newsletterbulletin/quarterly_Sukuk_bulletin.cfm?issue=U13011510492.
2. "The Zawya Sukuk Monitor," *Sukuk Quarterly Bulletin*, issue 16-4Q (2012), available at http://www.zawya.com/newsletterbulletin/quarterly_Sukuk_bulletin.cfm?issue=U130115104921.

to solving modern financial needs. Such a success also gets to show that not only has Islamic finance been viewed positively as attractive in the financial system with new value propositions as well as the potential to be a viable alternative to conventional financial system but it has also been adopted across the globe.

On observation, the *raison d'être* of Islamic finance is triggered by “legalistic” and “systemic” drivers. The approach taken in developing Islamic finance instruments and contracts reflects the two main drivers. Indeed, its future progress is mainly based on them. First, the emergence and establishment of Islamic banking and finance have been basically pushed by the desire to have a “legal” (*ḥalāl*) form of financial services. The purpose in this regard is to cleanse economic and financial practices from the prohibitive elements in financial transactions, namely, interest (*ribā*), gambling (*maysir*), uncertainty (*gharār*), and other prohibited (*ḥarām*) elements commonly found in financial services as delineated in the Qurʾān and Sunnah. Central in this perspective is the view that interest is *ribā*, which is prohibited in Islamic law. Therefore, in practice, as well as literature, a pragmatic objective to have “interest-free” banking and finance is evident. The understanding of the prohibition of *ribā* as a legal problem pertaining only to interest—not so much as an economic, or ethical, or even a systemic and civilisational problem—has resulted in a pragmatic approach being taken in developing Islamic finance by retaining conventional banking and finance structure with all its ramifications except interest.

Second, Islamic finance emerged with the purpose of arranging economic life in an Islamic way. A prevailing consciousness amongst contemporary Muslims is the need to rearrange the daily socio-economic aspects of life in line with Islamic injunctions within the overall framework and system of Islam as well as to provide indigenous solutions to the problems of the *Ummah*. Indeed, the rise of Islamic

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finance is taken as an immediate response to the crisis of the capitalist financial system by restructuring the financial and banking system of the world on an alternate foundation. The Islamic financial system is expected to respond to the current adverse global situation and its unfair financial system, which is exploitative, discriminatory and unjust in its allocation of resources. It is structured to systematically transfer wealth from the poor to the rich, be they individuals, organizations, or countries. Moreover, the existing conventional financial system is unstable with a fragile foundation that leads to bubble growth and a steady stream of attendant crises. Such concerns are articulated thus: “People are increasingly experiencing the workings of the money, banking and financial system as unreal, incomprehensible, unaccountable, irresponsible, exploitative and out of control.”³

In the Islamic approach, efforts are directed to transforming the financial and banking system, and ultimately the whole economy, so that they will conform to the Islamic spirit, principles, and objectives. The concern is not merely to secure the narrow legal compliance of banking and finance practices (to comply with the Islamic legal rulings, that is to say, to become Shari‘ah compliant), but a more substantive movement toward a good financial system enshrining Islamic values, visions and objectives (committed to *maqāṣid al-Shari‘ah*). Such an agenda is a shift from a purely pecuniary and hedonistic profit-taking economy to a gainful economy that is also characterised by ethical norms and social commitments.⁴

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3. James Robertson, *Transforming Economic Life: A Millennial Challenge* (Devon: Green Books, 1998), 54.
 4. Khurshid Ahmad, “Islamic Finance and Banking: The Challenge of the 21st Century,” in *Islamic Banking and Finance: The Concept, the Practice and the Challenge*, ed. Imtiazuddin Ahmad (Plainfield: Islamic Society of North America, 1999), 7–38.

Islam’s vision in finance: *Maqāsid al-sharī‘ah*

Viewed as practical manifestation of the worldview of Islam in economics and finance, Islamic finance is one of the most visible features of Islamic revivalism in the latter part of the 20th century. It does not only bring Islamic visions of economy in the financial sphere so that human well-being (*maṣlaḥah*) as well as a just and fair order of society (*‘adālah*) could be realised but also attempt to rearrange the financial practices to meet those objectives.⁵ Rather than understanding Shari‘ah as applying only to the domain of law or rulings (*aḥkām*) and regulating merely the practical aspects of human life—personal, society, state or international relationship—it begins with a wider understanding of Shari‘ah. Shari‘ah is thus understood as a system of life that encompasses creeds and the belief system (*aqīdah*), legislation and rulings (*aḥkām*) regulating both man–God relationship (*ibādah*) and man–man relationship (*mu‘āmalah*), as well as ethico-moral system (*akhlāq*). Such a perspective of Shari‘ah covers the entire spectrum of Islamic life, involving beliefs, moralities, virtues, and principles of guidance in economic, political, cultural, and civilisational matters which concern not only the Muslim community but the entire humanity.⁶

As to *maqāsid al-Sharī‘ah*, they consist of the entire goals and objectives of Islam as a system of life that constitutes standards and criteria, as well as values and guidance, which are based on divine revelation (*wahy*) and are to be applied in

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5. Mohamad Akram Laldin and Hafas Furqani, “Maqasid al-Shari‘ah and the Foundational Requirements in Developing Islamic Banking and Finance,” *ISRA International Journal of Islamic Finance* 4, no. 1 (2012): 183–89.
 6. Abdelaziz Berghout, “*Maqāsid al-Sharī‘ah* as an approach for intellectual reform and civilizational renewal,” *Proceedings of the International Conference on Islamic Jurisprudence and the Challenges of the 21st Century: Maqāsid al-Sharī‘ah and its Realization in Contemporary Societies*, vol. 3 (2006), 51–66.

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practical life in solving the problems and guiding direction of man's life. *Maqāsid al-Shari'ah* are thus the aims or underlying purposes of Shari'ah upon which it is established and into which life should be directed. Conceptually stemming from the basic belief that Shari'ah is designed on the basis of and for the purpose of human *maṣlahah* (well-being),⁷ they basically relate to human interest by providing for a good order of life and well-being (*maṣlahah*) and embrace all dimensions of human life in the individual and community spheres, the micro and macro dimensions, as well as religious (*dīn*) and worldly (*dunyā*) matters.⁸ The Shari'ah would ensure benefits to the individual and the community, and all its rulings are designed to protect those benefits and facilitate improvement and perfection of the conditions of human life on earth.⁹

This is reflected in the *maqāsid* discourse, in which scholars have attempted to classify them into various categories to capture the essential Islamic spirit and direction in human life. Al-Ghazzālī is widely acknowledged as the first to attempt to offer a systematic thought on the *maqāsid* of the Shari'ah. In *al-Mustasfā*, he classified *maqāsid* based on a hierarchy of priorities into essentials (*darūriyyāt*), complementaries (*hājjiyyāt*), and embellishments (*taḥsinīyyāt*).¹⁰

7. See Ibn al-Qayyim, *I'lām al-Muwaqqi'īn 'an Rabb al-'Alamin*, vol. 3 (Beirut: Dār al-Kutub al-'Ilmiyyah, 1991), 11.
8. Al-Shātibī in this regard notes, "by enacting the Shari'ah, the Law Giver intended to establish *maṣlahah* in the hereafter and this world" (*inna al-shāri' qasada bi al-tashrī' iqāmat al-maṣāliḥ al-ukhrāwiyyah wa al-dunyāwiyyah*). See Al-Shātibī, *Al-Muwāfaqāt fi Uṣūl al-Shari'ah*, vol. 2 (Beirut: Dār Ibn 'Affan, 1997), 37.
9. Mohammad Hashim Kamali, *Maqāsid al-Shari'ah Made Simple* (Washington: IIIT, 2008), 1.
10. For al-Ghazzālī's clarification of *maqāsid* and *maṣāliḥ*, see his *al-Mustasfā min 'Ilm al-Uṣūl*, vol. 1 (Beirut: Dār al-Kutub al-'Ilmiyyah, 1993), 74. Al-Shatibi and later on ibn 'Ashūr acknowledged the classification and elaborate further on details. A recent elaboration in the contemporary context has been done by Umer Chapra, "The Islamic Vision of Development in the Light of *Maqāsid al-Shari'ah*," *IIIT Occasional Papers Series 15* (Washington: IIIT, 2008).

The essentials refer to five fundamental matters: faith (*dīn*), life (*nafs*), intellect (*‘aql*), lineage (*nasl*), and property (*māl*). Their protection is essential to normal order in society as well as to the survival and well-being of individuals, in their religious and worldly affairs; and their destruction will lead to chaos and collapse of normal order in individual lives as well as the society. As the essential *maṣlahah* constitutes an all-encompassing theme of the Shari‘ah and all of its laws are in one way or another related to the protection of these benefits, the Shari‘ah takes affirmative and also punitive measures to promote and protect these values. The complementary benefits (*al-ḥājjiyyāt*) supplement the five essential needs facilitating people’s affairs in a better way and removing severity and hardship, although their loss does not pose a threat to the very survival of normal order. The *taḥṣiniyyāt* (embellishments) are the benefits (*maṣlahah*) whose realisation leads to life improvement (*taḥṣīn*), beautification (*tazyīn*), and perfection (*kamālīyyāt*), and the attainment of that which is desirable without any violation of good moral standards (*makārim al-akhlāq*) or an excessive or extravagant lifestyle (*mahāsīn al-‘ādāt*).¹¹

In relation to Islamic finance, in particular, *maqāṣid al-Shari‘ah* refer to the overall goals and meaning that the Shari‘ah aims to achieve in financial activities and transactions. The *maqāṣid* discussion in the literature on Islamic finance is usually framed in terms of the protection of wealth (*ḥifẓ al-māl*) as mentioned by al-Ghazzālī in his classification of *maṣlahah*.¹²

11. Al-Shātibī, *Al-Muwāfaqāt*, 22.

12. See, for example, Al-Khelaifi, “Al-Maqāṣid al-Shari‘iyah wa Atharuhā fi Fiqh al-Mu‘āmalat al-Māliyyah,” *Majallat Jāmi‘at al-Mālik ‘Abd al-‘Azīz: al-Iqtisād al-Islāmī* 17, no. 1 (2004): 3–49; Mohamad Akram Laldin, “Understanding the Concept of Maṣlahah and its Parameters when Used in Financial Transactions,” *ISRA International Journal of Islamic Finance* 2, no. 1 (2010): 61–84; Asyraf Wajdi Dusuki and Said Bouheraoua, “The Framework of *Maqāṣid al-Shari‘ah* (The Objectives of the Shari‘ah) and its Implications for Islamic Finance,” *ISRA Research*

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This approach is justified as the subject matter of finance is basically ways of allocating resources from the surplus sector (capital providers) to the deficit sector (capital users) so that wealth is smoothly circulated and human welfare is realised. As finance deals with wealth allocation and appropriation (from mobilisation to utilisation), *maqāṣid* under the rubric, *ḥifz al-māl*, should, therefore, be understood and discussed by looking at the nature, function and role of wealth in relation to the primary objective of realising human well-being, both individually and collectively, by acquiring benefits (*maṣlaḥah*) and preventing harm (*mafsadah*).¹³

For Islamic economics, banking, and finance, the objectives, among others, would include (1) the circulation of wealth in the society, from creation to distribution; (2) advocating fair and transparent financial practices and (3) promoting socio-economic justice. Commercial and financial activities are viewed positively as mechanism to circulate wealth among all the sections of society so that it is not concentrated at the hands of only a few, but rather is well distributed through all sectors of the economy that would benefit human well-being. Furthermore, Islam encourages wealth to be employed in productive activities. Funds should not be wasted, left idle,¹⁴ or managed unprofessionally.¹⁵

Islamic economic system as a general framework would ensure fair and equitable mobilisation and distribution of resources. Islamic finance in particular is developed in line with the Islamic objective of wealth circulation by observing Islamic rules that put regulations of right and wrong in the spirit of protecting wealth (*ḥifz al-māl*). Islamic finance institutions,

Paper No. 22 (2011); and Habib Ahmed, "Maqāṣid al-Sharī'ah and Islamic Financial Products: a Framework for Assessment," *ISRA International Journal of Islamic Finance* 3, no. 1 (2011): 149–160.

13. *Al-Mā'idah* (5): 6.

14. *Al-Tawbah* (9): 34.

15. *Al-Nisā'* (4): 5.

including Islamic banks, insurance (*takāful*) companies, mutual funds, and other Islamic finance companies, play a role in resources circulation in society and enhancing human well-being.

Permissibility (*ibāḥah*) is the overarching principle governing commercial and financial transactions. Such a principle, in practice, facilitates the *maṣlahah* (well-being) realisation or removing the hardships or harms in financial transactions. Freedom of contract is not only recognised as part of the system but also guaranteed and treated as a necessary requirement for a valid contract. Nevertheless, this freedom is to be conducted within the atmosphere of fairness, equity and justice as well as honesty, truthfulness and high morality between transacting parties. Any contract stipulated and agreed upon by both parties, arising from that consciousness, should be respected and enforced.¹⁶

Such a principle ensures that justice is carried out in individual dealings and transactions. Economic transactions demand equal rights and opportunities and are not allowed to be enforced without mutual consent of two parties (*tarāḍin*). Likewise, unfair dealings or unjustified actions that would lead to economic injustice or exploitation such as bribery (*rishwah*), fraud or deception (*ghish*), cheating (*tadlīs*), uncertainty and lack of clarity (*gharār*), or unjustified increase in wealth (*ribā*) are condemned. *Ribā* is very much related to injustice. It is prohibited not simply because of a matter of interest on loans or banking. Rather, it is a comprehensive concept which encompasses all factors of production and distribution, such as capital, land and labour whereby one party attempts to gain benefit at the expense of the other without having an equal counter value (*iwad*).¹⁷ *Ribā* is forbidden on the grounds that

16. *Al-Mā'idah* (5): 1.

17. Abdul Hamid Abu Sulayman, "The theory of the Economics of Islam (1)," *IJUM Journal of Economics and Management* 6, no. 1 (1998): 79–122.

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it fosters unjust acquisition of wealth at the expense of social justice, the equitable distribution of wealth, and the well-being of the community.¹⁸ The abolition of *ribā* also implies that Islam promotes cooperative and participatory financing for resource mobilisation and circulation in society, and subsequently, attains general productivity and well-being.

At the macro level, the goal of Islamic financial system is to realise social justice. It attempts to realise economic justice through wealth circulation, efficiency in resources utilisation, fulfilling society's basic needs, elimination of poverty, and improving human well-being. The main purpose of resource circulation (distribution) is to achieve justice, maximum efficiency, and improvement of human well-being in general. The spirit of achieving and realising *maqāṣid al-Sharī'ah* should act as a primary guidance in the effort of setting up and developing Islamic banking and finance. The vision should be properly understood prior to outlining the guideline or setting up of the practical rules (*al-aḥkām al-shar'īyyah*) to get the right output in an *ijtihād* process and determine the operational framework and direction. While strict adherence to Islamic legal rulings is important in contractual processes, the *maqāṣid al-Sharī'ah* would guide the practical operations to remain within the direction as envisioned by Islamic values and spirit.

This requires the approach to not only observe the “correct mechanisms” in a technical-procedural sense but, most importantly, be able to capture the essential spirit, noble goals, as well as right direction in certain actions in which literal reading of the text could be avoided. The *maqāṣid al-Sharī'ah* approach would ensure two ways of “applicability” of Shari'ah principles and objectives to all situations and “suitability”

18. Masudul Alam Choudhury, “Usury,” *Encyclopaedia of the Qur'an* (2012), available at http://referenceworks.brillonline.com/entries/encyclopaedia-of-the-quran/usury-SIM_00438.

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of human circumstances in all spaces and times within the grand framework of Shari‘ah.¹⁹ In literature, such an effort is known as *taqrīr al-maṣlahah* (confirming the benefits), *sadd al-dhārī‘ah* (closing the means leading to harmful result), *taghyīr* (changing) or *daf‘ al-maṣṣadah* (repelling the harms) and *raf‘ al-ḥarj* (removing the hardship).

Current awareness among academicians as well as practitioners to explore the concept of *maqāṣid al-Shari‘ah* for Shari‘ah-compliant finance in product development signifies a paradigm change in Islamic finance which should be appreciated. The *maqāṣid al-Shari‘ah* fulfilment paradigm argues for the entire Islamic finance development enterprise to be driven more by distinct missions and values as elaborated in the goals and objectives of Shari‘ah rather than a mere satisfaction of Islamic legal requirements through conventional contract modification. Shari‘ah compliance in this regard is not understood in a narrow sense of just financial products that satisfy the contractual requirements and mechanisms in Islamic law. This perspective has led to replication and modification of conventional products in the Islamic mould. While this might be valid in the nascent stage of industry development, efforts should also be directed to a more creative movement of financial products and system that would reflect Islamic values in financial dealings and would effectively deliver Islamic objectives in financial sphere.

In other words, a breakthrough in understanding Shari‘ah principles and objectives in financial dealings and practices should be attempted. Islamic finance should be directed towards a bigger agenda of creating a new financial system addressing human economic life. The challenge posed

19. Mohamed El-Tahir El-Mesawi, “*Maqāṣid al-shari‘ah* as an *usuli* doctrine or independent discipline: A study of Ibn ‘Ashur’s project,” in *Proceedings of The International Conference on Islamic Jurisprudence and the Challenges of the 21st Century: Maqāṣid al-Shari‘ah and its Realization in Contemporary Societies*, vol. 3 (2006), 92.

for Islamic finance should not be understood as transforming the conventional financial practices or products to an Islamic mould, but rather, reforming the adverse situation of the world economy; supplementing the weaknesses in current practices; and also offering a new and better perspective in guiding man to achieve the ultimate well-being. The multifaceted crises confronting humanity—as manifested in the gap between material welfare and other dimensions of well-being, massive poverty and injustice, ecological destruction, etc.—reveal that the existing system has yet to be capable of solving such issues. Thus, undertaking such a task requires a comprehensive understanding of Shari‘ah in a multi-disciplinary perspective transgressing the legal compliance technicalities to strategise the structure of the industry as well as apply the Islamic vision in financial sphere. At the same time, all stakeholders—including practitioners, philosophers, economists, and sociologists—are invited to participate in developing an “Islamic” financial system.

In essence, *maqāṣid al-Shari‘ah* as a concept reflect that broad and comprehensive understanding of Shari‘ah and its relation to economic and financial domain. Thus, *maqāṣid al-Shari‘ah* in Islamic finance are the overall goals and meanings that the Shari‘ah aims to achieve via its principles and rulings related to the financial activities and transactions. The *maqāṣid* orientation in developing Islamic finance would set a new perspective of finance and comprehensive changes in framework and approach, provide unconventional—if not out-of-the-box—solutions in satisfying financial needs, and enter as well as cater the larger number of society in the mobilisation of resources and realising well-being. Concerted efforts in producing financial instruments that are consistent with and serving the higher objectives are lauded. Islamic finance should therefore be optimised to ensure that financial products of financial and ethical quality are supplied to the public.

Conclusion

Islamic finance has gone through a spectacular rise which shows that Islam and Shari'ah can contribute positively to solving modern finance needs. As a financial system, Islamic finance has the potential to be a viable alternative to the conventional system and adopted globally. Nevertheless, the challenge remains as to whether Islamic finance is really able to offer a better alternative to conventional finance. As complex as the challenge seems to be, responses should also be comprehensive, systematic and systemic in nature. This would require putting in concerted efforts to develop a more holistic financial system. The focus of attention should, therefore, not be limited in offering financial practices that merely satisfy the minimum standard of legal requirements (Shari'ah compliance) but in producing a well-conceived, consistent, and integrated framework in financial practices from an Islamic perspective. The current trend in conceptual and practical development of Islamic finance that intends to re-shape the industry in accordance with the higher objectives of Shari'ah, instead of a mere Shari'ah "legal" compliance, should be appreciated. Further research in this fundamental area should be done so that a meaningful Islamic banking and finance could be produced.