



Maqasidic General Parameters in Utilizing Al-Maslahah as a Mechanism for Shariah Decision Making in Islamic Financial Transactions

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ABSTRACT

Emerging issues in Islamic financial transactions are complex and crucial to be given a solution as it involves shariah ruling and potentially impacting the financial stability of the nation. The absence of specific texts to address these new issues necessitates the use of *ijtihād* as a shariah decision making mechanism in Islamic financial transaction. It is well-known that the concept of *maṣlaḥah* is widely applied in the realm of Islamic finance and serves as a benchmark for achieving *Maqāsid Sharī'ah*. However, it is essential to establish parameters for utilizing *maṣlaḥah* as an *ijtihād* mechanism in Islamic financial transactions to prevent conflicting with Islamic principles. This is due to the misuse of *maṣlaḥah* in such issues carries significant risks and could potentially lead to unlawful rulings if not properly managed. This research is a qualitative study and the data collection process for this research is made up of content analysis method, and the data sources are the collections of data from the Holy Quran, hadith, Islamic legal maxims, classical (*turāth*) books, contemporary legal books, article journals, conference papers and others document references. Researchers then employ thematic analysis and deductive approach to analyze the applicability of the parameters the issues facing by Islamic financial institutions in Malaysia. Hence, this study aims to propose parameters in utilizing *maṣlaḥah* as a mechanism for *ijtihād* in Islamic financial transactions. Using well-defined and accurate *maṣlaḥah* standards can effectively achieve the principles of *Maqāsid Sharī'ah*. The data collected was obtained from books, journal articles, case studies, and contemporary collective *ijtihād*. The results of the study have shown utilizing the pretext of *maṣlaḥah* need to be improvised and monitored, especially in the field of Islamic financial system, where they need to be precisely and carefully studied in order to determine the origins, paths, and regulations. The methodology for this approach is known as *Fiqh al-Maqāsidī*, and it allows to interpret legal texts (*naṣ*) in true way that matches people's realities in various circumstances so as to meet their needs and desires.



Introduction

Maqāṣid al-Sharī'ah refers to the objectives or intents of *Sharī'ah* as well as secrets of *Sharī'ah* (*asrār al-Sharī'ah*) a wisdom (*al-hikam*), which are ordained by Allah S.W.T. comprehensively or in most situations, revelation of the commandments without specifying certain *Sharī'ah* rulings (Al-Shatibi, 2005). They also serve as guiding and overarching principles for adopting the ideal benefit (*maṣlahah*), meaningful, as well as purposeful way of life.

It is noted that *maṣlahah* under *Maqāṣid al-Sharī'ah* can be classified into necessities (*darūriyyāt*), needs (*hājīyyāt*), and embellishments (*taḥsīniyyāt*). It is further elaborated that necessities include the protection of religion, life, lineage, intellect, and wealth which is typically known as *kulliyāt khams* (five necessities). The application of the five necessities is commonly highlighted in variety of ways. For instance, the protection of religion may be achieved through avoiding the practice of usury (*ribā*) and other practices or activities that are forbidden by *Sharī'ah*. The protection of life can be cited as a justification for prohibition on gambling and investments in industries or activities that harm human life, such as tobacco and alcohol. Further, protection of intellect can be used to justify prohibition of fraud and other deceptive financial practices. Moreover, the goal of protecting lineage can be invoked to justify encouragement of investments and economic activities that support stable family structures and promote the well-being of society and prohibition of investments in activities that promote immoral behaviour or harm the institution of the family, such as pornography or usurious lending. Lastly, the goal of protection of wealth can be invoked to justify prohibition of theft and other financial crimes.

In the context of Islamic finance in Malaysia, research problem raised from the increasing complexity of financial transactions and the absence of direct texts from primary Islamic sources necessitate *ijtihād* guided by the application of *maṣlahah* theory to provide a viable solutions aligned with *Maqāṣid Sharī'ah*. However, there has been discussion among scholars on the application of *maṣlahah* reasoning in certain financial cases that result in rulings that seems to be contradict with Islamic principles. Specifically, in disagreement over the issue of deviating from the Divine Text (*Naṣ*) for the purpose *maṣlahah* in Islamic financial transactions. Thus, establishing clear parameters for *maṣlahah* application is essential to ensure that *Sharī'ah* rulings remain consistent with Islamic values, thereby enhancing the credibility and stability of the Islamic financial sector in Malaysia. In accordance with the aforementioned issue, this article tries to explore on the parameters of *maṣlahah* that enhance the alignment of Islamic financial practices in Malaysia, while mitigating the risks of deviation from core Islamic principles.

Literature Review

The Definition of Maṣlahah

In *fiqh* technical terms, according to (Al-Ghazālī, 1993) The real meaning of *Maqāṣid Sharī'ah* is *maṣlahah*, the term *maṣlahah* signifies: "The benefit that God intends for His servants to derive from the preservation of their religion (*al-dīn*), souls (*al-nafs*), intellect (*al-'aql*), offspring (*al-nasl*), and property (*al-māl*) in the particular order". Al-Ghazālī (1993) also defines the *maṣlahah* by saying: "As for *maṣlahah*, it is originally a phrase about bringing a benefit (*maṣlahah*) or eliminating harm



(*mafsadah*), but the actual meaning of *maṣlahah* is preserving the objectives of *Sharī'ah*, and these objectives from every *al-mukallaf* (a legally competent person) is five, which is to preserve one's religion, souls, mind, offspring and property. Anything that incorporates these five components is a "*maṣlahah*," while anything that misses them is a harm (*mafsadah*). Anything that does to eliminate the harm is a "*maṣlahah*".

Al-Salāhāt (2003) of the view that *Māqāsid Sharī'ah* is perceived by jurists as manifesting in the sense of *maṣlahah* because of the close connection between both. It is due to the *Maqāsid Sharī'ah*'s lofty objective is to attain the benefit (*maṣlahah*) of the people in this world and the hereafter. As such, *maṣlahah* is considered a pivotal element of *Maqāsid Sharī'ah*, and most jurists recognize it as a source of jurisprudence under the "*Masāliḥ Mursalah*" or "*Istiṣlāḥ*" categories in the process of *ijtihād* as a *Sharī'ah* decision making mechanism in Islamic Financial transaction.

Intricate Link between Evidence of Sharī'ah (dalil) and the Maṣlahah Shar'iyah

In Islamic jurisprudence, the evidence of *Sharī'ah (dalil)* and the *maṣlahah* as an objectives of *Sharī'ah (Maqāsid Sharī'ah)* are intricately linked. Therefore, scholars emphasize considering both simultaneously for comprehensive and accurate legal rulings. If one does not, the results of the *Sharī'ah* ruling will be either incomplete or at worst distorted. In parallel, Muhammad (2023) it is important for those who are considering the hukum via the *Maqāsid* mechanism to analyze their argument closely with the evidence of *Sharī'ah*. Whereby, in the situations where there is no evidence, precedent or analogous fiqh (*qiyas*) that can be used; it will be more important to rely on the *Maqāsid Sharī'ah* approaches therein; which as a truly reliance on the concept of the general *Sharī'ah* evidence in providing *maṣlahah*.

It is indisputable that the *Maqāsid Sharī'ah* gains prominence in *Sharī'ah* decision making (*ijtihād*) for contemporary issues lacking direct evidence from primary sources in *fiqh* like Al-Quran, Sunnah and the early discussion of the classical text in Fiqh. Al-Suyūṭī (1983) quoted from Al-Ghazālī saying that: "The *Maqāsid Sharī'ah* are the direction of the *mujtahids*, whomever follows the direction will find the truth". Furthermore, numerous scholars have asserted that it is imperative to link the understanding of *Maqāsid* with *ijtihād*. Al-Shātībī (2005) has mention in his prominent book *al-Muwāfaqāt*: "The level of *ijtihād* is obtained for those who posses with two qualities: first, he must be able to comprehend the *Maqāsid Sharī'ah* on its perfection, and second, he must be able to deduce a hukum based on his understanding on the *Maqāsid*. When someone reaches a point where they can comprehend the objective and rationale behind each chapter and discussion of *Sharī'ah*, then he reached the reason to be the Prophet's heir in terms of elucidating fatwas and clarifying the divine decision".

Conferring to this assertion, according to Abdullah, (2018) *Maqāsid Sharī'ah* plays a multifaceted role in determining the *hukm* (legal ruling) based on the evidence (*dalil*), as it aids and guide the *mujtahid* in validating divine texts' applicability and figuring out how to apply them in practice. In addition, it also serves to reinforce the evidence and to resolve conflicts between evidence. Not only that, but *Maqāsid Sharī'ah* may also play an independent role in establishing the *Sharī'ah* ruling, as demonstrated in *Masāliḥ Mursalah*, as well as in stating a preference for



conflict resulting from disputes on how to construe the literal evidence, as was the case in "*takhsīṣ al-naṣ bi al-maṣlaḥah*" (give specific meaning to the divine text based on *maṣlaḥah*), for those who accepted the notion. In addition, it enhances the Islamic legal principles where the symbiotic relationship between the evidence of *Sharī'ah (dalīl)* and the objectives of *Sharī'ah (Maqāṣid Sharī'ah)* enrich the interpretative process and contribute to the robustness of Islamic legal principles (Alias, et al., 2024).

The Issue of Deviating from the Naṣ (Divine Text) to the maṣlaḥah in Islamic Financial Transactions

Within the realm of Islamic finance, the utilization of *maṣlaḥah* is among the most crucial arguments used by both individual scholars and institutional authorities for their decisions and judgments. But concerns surfaced when certain scholars implied that transactions that were prohibited such as usury and uncertainty (*gharār*) could be justified under the pretext of either public or private *maṣlaḥah* (Abdullah, 2018).

Concurrently, in the view of Al-Fauzān (2014) some scholars have criticized the views of some of their contemporaries who expanded the adoption of the principle of *maṣlaḥah* in Islamic finance, permitting the prohibition of what is deemed to be a necessary knowledge in religion. These views included the approval of the conventional interest from bank products by The National Council Fatwa Muzakarah Committee (no. 1970), transaction and *sukuk* based on the sale of *Īnah* by Bank Negara Malaysia, (2010) on the grounds that their legality will benefit the banks and customers and supporting the employment of money. Another example is the approval of *retakaful* to conventional companies Originally, conventional insurance was prohibited, but due to the lack of significant Islamic businesses in the Islamic insurance (*takāful*) market, some jurists have permitted *retakaful* with conventional companies in the *maṣlaḥah* of the public and the *ḥajjah* of Islamic financial institutions (Bank Negara Malaysia, 2010).

In some situation in the theoretical method of *maṣlaḥah*, is permissible to support transgression (i.e. insurance) not because it is a transgression or sin, but because it is a means of obtaining the more important interest, as well as if the aid obtains a benefit (*maṣlaḥah*) that contribute to prevent harm (*mafsadah*). Hence this not considered as aid for transgression. This is based on this view:

ولكن قد يجوز الإعانة على المعصية لا لكونها معصية، بل لكونها وسيلة إلى تحصيل المصلحة
الراجحة، وكذلك إذا حصل بالإعانة مصلحة تربو على مصلحة تفويت المفسدة.

Translation: However, it may be permissible to subsidize the sin (*i'ānah 'alā al-ma'siah*) not merely because it is a sin (*ma'siah*) but because it is a means of obtaining the preponderant interest, as well as if the aid obtains a *maṣlaḥah* that contribute to eliminate the harm (*mafsadah*).

(‘Abd Al- Salām, 1991, p. 87)



Methodology

The researchers employ suitable methodology for this research by using a qualitative method, primary and secondary sources. The reason for choosing this method is the qualitative research is founded mostly on the interpretive and structuralism paradigms. It seeks to develop a better knowledge of a subject rather than anticipate results, as exploratory approach does (Denzin & Lincoln, 2011). Interpretive paradigm seeks to expand information by getting a greater understanding of individuals' personal viewpoints and the meanings they give to those views, whereas Constructivist approach sees knowledge as produced as individuals attempt to make sense of their experience (Creswell & Poth, 2018).

By utilising qualitative methodologies that are frequently used in the analysing of literary texts, the research data were gathered through library study which comprised classical text, journal articles periodicals, and books on connected topics (George, 2008). Using this research approach, the researchers evaluate and analyse information's from primary and secondary sources pertaining to the guideline and parameter for *maṣlaḥah*. The data collection process for this research is made up of content analysis method, and the data sources are the collections of data from the Holy Quran, hadith, Islamic legal maxims, classical (*turāth*) books, contemporary legal books, article journals, conference papers and others document references. Researchers then employ thematic analysis and deductive approach to analyze the applicability of the parameters the issues facing by Islamic financial institutions in Malaysia.

Findings

Prior to delving more into this subject, it is essential that we ascertain the current trends in *Maqāsid* and *maṣlaḥah*. Khalil (2013) claimed that these tendencies can be broadly classified into three categories:

- i. Dryness: Those who resort to texts with their literal understanding in it without considering the purposes and meanings of those scriptures, and most of them are more to pro *Al-Dhahiriyyah* school of thought. They are the continuation of those who reject analogy (*al-Qiyās*) and deny who justified the ruling with the *Maqāsid* and *maṣlaḥah*.
- ii. Extremists: People who have broadened their interpretation of the objectives (*Maqāsid*) and the meanings to the point where they make decisions that are contrary with the legal texts (*naṣ*). These people are represented by both new and old disciples of the rationalist school, who subvert the texts and make decisions based only on their intellectual grasp of the allegedly *maṣlaḥah* argument.
- iii. Moderation: those who adopted the methodology of classical scholars and the contemporary scholars in integrating *Sharī'ah* legal text (*naṣ*) and the objectives (*Maqāsid*), through the implementation of the specific partial evidence (*dalīl khās*), which is the legal text stipulated in the Qur'an and Sunnah, as well as applying the general evidence that indicated by the *Sharī'ah* texts by their



objectives (*Maqāṣid*) and meanings (*ma'āni*) with accordance to all the parameters.

- iv. The aforementioned division shows that there is occasionally a misuse of the *maṣlahah* argument over the legal ruling. This is due to the complexity of understanding *maṣlahah* and *mafsadah* which requires precision and diligence. As been pointed out by Al-'Izz bin Abd Al-Salām (1991): "Among the *maṣlahah* and *mafsadah* is what only everyone who with a sound understanding and a straight temperament can know to be accurate, with their likely preferences, and there are differences between people in that regard—to the extent that they differ— may cause even the most intelligent people to miss some of what the clumsy and inquisitive could see, but it is very minimal”.

When it comes to financial transactions matters, relying on the authority of the *maṣlahah* might opens the door to a prohibition risk. This is due to human desires tend to bring benefits, monies, and profits without carefully examining the reality of this benefit and its safety from harms, as well as avoiding other *maṣlahah* that are recognized by the *Sharī'ah*, which is the truly interest of the hereafter. Man might determine what is infact bad for himself and the ummah as a whole if he were given the freedom to weigh the interests in the *Sharī'ah* legal ruling in light of his psychological affects and abstract human thinking. He might observe that the text of *Sharī'ah* stated requirements mostly contradict the *maṣlahah* that he perceives and believes in, leaving them unchecked. Perhaps this will cause the good to be replaced with evil or place the comprehensiveness of *Sharī'ah* in the realm of illusory human interests.

It goes without saying that these doubts have had an impact on Islamic banking in certain instances, causing them to be excluded from the *Sharī'ah* text under the guise of *maṣlahah*. Some instances of this are the new interpretations of the *Sharī'ah* texts on usury, which cast doubt on the texts' eternal sanctity of usury or reject the existence of usury in some of them. This include restricting the usury prohibition to loans meant for consumption rather than investment, as well as productive loans.

In reaction to these trends, according to Al-Raisūni (2005) some scholars have closed doors to advocates of indolence and parasites in the name of *maṣlahah* and interest. Their catchphrases have since evolved to include "no legal text (*nas*) with *ijtihād*," "wherever we opine, that is the *maṣlahah*," and "wherever our interpretation and purpose go, there are the *Maqāṣid Sharī'ah*." These scholars advocate weighing the *maṣlahah* according to God Almighty's will in the balance with taking into account the devotional dimension in each and every legal decision. In a matter of fact, no one may deviate from the legal text that is definitively authentic and indicative proven by referring to the *maṣlahah* claimed in a particular matter. Nor to justify usury practice as well as forbidden things on the basis of *maṣlahah*, because the *maṣlahah* in forbidden matters is fictitious due to confusion in its concepts and a wrong portrayal of the reasoning for the prohibition and with its contradiction to the conditions for accepting the *maṣlahah* as legislative evidence to derive legal rulings (Al-Raisūni, 2005).



Fundamentally, it is impermissible for anybody to depart from the legal text (*naṣ*) that is proven definitively authentic and indicative by merely referring to the *maṣlahah* asserted in a certain case. Neither to use the *maṣlahah* to defend prohibited practices or items based on fictitious concepts, or a misrepresentation of the rationale behind the prohibition, and breach of the conditions to acknowledging the *maṣlahah* as legislative evidence from which legal rulings are derived (Abu Zaid, 2006).

Discussion

There are general parameters and condition derived from scholarly discourse in utilizing the *maṣlahah* in determining the legal ruling (*ḥukm*) in Islamic Financial Transaction, including:

First Parameter: The *Maṣlahah* is at the Level of Necessities (*Ḍarūriyyāt*), or at Least the Needs (*Ḥājīyyāt*), Not the Embellishments (*Taḥsīniyyāt*)

Islamic law states that *maṣlahah* have several ranks according to their power, which are necessities (*Ḍarūriyyāt*), needs (*Ḥājīyyāt*), and embellishments (*taḥsīniyyāt*). When practicing *ijtihād* to determine legal ruling, all three of these levels of interest are considered. Regarding this, the scholars dispute on the following points:

First opinion: The majority of the scholar view that the *maṣlahah* or public interest (*maṣlahah ʿāmmah*), which is *Sharīʿah* has considered an argument for excluding the ruling and giving it the special ruling, which is only applicable in the necessities. This specificity may not be granted to the stage of needs (*Ḥājīyyāt*) and embellishments (*taḥsīniyyāt*). Instead, the need (*Ḥājīyyāt*) and embellishments (*taḥsīniyyāt*) must adhere strictly to the original *Sharīʿah* ruling. According to Ibn Qudāmah (2002):

فهذان الضربان –الحاجية والتحسينية– لا نعلم فيه خلافاً في أنه لا يجوز التمسك بهما من غير

أصل؛ فإنه لو جاز ذلك كان وضعاً للشرع بالرأي ولما احتجنا إلى بعثة الرسول

Translation: There is no dispute that these two divisions – the needs (*Ḥājīyyāt*) and the enhancement (*taḥsīniyyāt*) – should be followed from the outset of the legal ruling. If they were, then *Sharīʿah* law would be decided by opinion, and the Prophet's mission would no longer be necessary.

(Ibn Qudāmah, 2002, p. 480)

Second opinion: Imam Al-Ghazālī (1968) believed that the *maṣlahah* is considered by *Sharīʿah* to determine the legal ruling is limited to necessities (*Ḍarūriyyāt*) and needs (*Ḥājīyyāt*) without embellishments (*taḥsīniyyāt*). Invoking the argument of *maṣlahah* at the enhancement level to provide an exception to specific legal rulings is not acceptable unless there is specific, unambiguous *Sharīʿah* evidence that supports the determination of this exception based on the *maṣlahah*. Invoking the authority of *maṣlahah* in matters of enhancement is an innovation in *Sharīʿah* because it is based on mere minds and approbation (*istiḥsān*).



The significance regarding these three levels of interest in *ijtihād* is to align legal rulings with *maṣlaḥah* and to ensure harmony with the broader objectives of *Sharī'ah*. On the other hand, avoiding arbitrary decisions by emphasizing the need for clear *Sharī'ah* evidence when using pretext of *maṣlaḥah* in matters of enhancement and to prevent subjective interpretations. In the complexity of Islamic financial system in contemporary era, it seems that Bank Negara Malaysia (BNM) has adopted Al-Ghazālī approach and providing Hajah and Darurah Policy Document to be implemented in Islamic Financial Institution (IFI) to fulfill nation needs (Bank Negara Malaysia, 2024).

Hence, understanding the classifications of *maṣlaḥah* in *Sharī'ah* law is essential for scholars engaging in *ijtihād*. The debate between the majority view and Al-Ghazālī's perspective highlights the careful balance needed when considering *maṣlaḥah* in determining legal rulings. This parameter emphasizes the need for a cautious approach, especially in matters beyond necessities and needs. Imam Al-Ghazālī's perspective on the use of *maṣlaḥah* in Islamic jurisprudence is notably more accommodating than the majority view. His stance allows for the inclusion of both necessities (*darūriyyāt*) and needs (*ḥājīyyāt*) in the application of *maṣlaḥah*, offering a level of flexibility that is essential in the evolving landscape of Islamic finance. This approach provides the necessary flexibility to deal with complex problems that arise in financial products and operations, enabling institutions to find innovative and Shariah-compliant solutions that are essential for the sector's growth.

Second Parameter: The maṣlaḥah's Existence is Certainly Established or by Preponderance of Thought (ghalabah al-ẓan)

Scholars such as Imam al-Ghazali and others emphasize that the *maṣlaḥah* should consist of two primary aspects: bringing benefit and eliminating harm. So, It is necessary to determine that both should coexist in order to define the legal ruling. Since according the Islamic legal maxim stated by Al-Ansārī, (n.d.) that:

ما جاز للضرورة أو للحاجة قيّد بوجودها

Translation: What is permitted due to necessity or need is limited by its presence.

This requirement must be established to exclude a specialized rule for a special situation from the legal ruling of regular conditions. In order to be recognized as a valid reason for the exclusion of a provision in the public interest, the *maṣlaḥah* must be proven to exist with certainty. When discussing the matter of taking away parish funds Al-Ubādī (1986) emphasized the need for "definitive *maṣlaḥah*" and rejects delusional or uncertain *maṣlaḥah* to convey this by stating: "The *maṣlaḥah* must be definitive and not delusional".

Additionally, the condition of the *maṣlaḥah*'s existence with certainty is align with the principle of preponderance of thought, because this concept is acceptable in the principles of *Sharī'ah* pursuant to the maxim (Al-Mardāwī, 2000) (Al-Zuhailī, 2006):



غلبة الظن منزل منزلة اليقين

Translation: The preponderance of thought is in the meaning of certainty.

Al-‘Aṭṭār, (n.d.) said: "Considering the types of interests requires the preponderance of thought to be considered. When it has a think that the ruling has a preponderant thought of interest over the harm, and since it is known that true interest is duly recognized by the *Sharī‘ah*, it is necessary to think that such interest is recognized and the work with preponderant is an obligation. In addition, by looking at the Companions of the Prophet in some cases were unanimously convinced in approving the rulings by the *maṣlaḥah* and did not pay attention to some conditions stipulates by the jurists on the analogical practice (*al-Qiyās*) between the origin (*usūl*) and the branch (*far‘u*), as the laws are mostly intended for the realization interests as proven by the induction method".

Based on this condition, certainty and preponderance of thought are crucial to exclude specialized rules for unique situations from regular legal rulings. A delusional concept of *maṣlaḥah* or uncertainty are deemed insufficient to justify exceptional rulings based on *maṣlaḥah* due to maxim (Al-Zuḥailī, 2006):

"لا عبرة للتوهم"

Translation: There is no consideration for delusion.

Further, uncertainty itself cannot be used as justification for a ruling made under the guise of the public interest, as it is not allowed to base *Sharī‘ah* rulings on arguments that give rise to grounds of doubt, pursuant to the mention maxim mentioned by Al-Subkī (1991):

الرخص لا تناط بالشك

Translation: Facilitation is not entrusted with doubt.

The significance for *ijtihād* is that the scholars engaging in *ijtihād* must ensure its certainty in order to justify exceptional rulings. Along with excludes the uncertain elements such delusional interest or element of doubt are deemed unacceptable in *Sharī‘ah* rulings.

To conclude, certainty and clarity are paramount in establishing *maṣlaḥah*'s existence for legal rulings. This parameter underscores the need for a robust foundation, free from uncertainty and doubt, when considering the public interest (*maṣlaḥah ‘āmmah*) in exceptional circumstances. This ensures a principled and sound application of *maṣlaḥah* in Islamic jurisprudence.



Third Parameter: The Distinctive Decision Made under the Pretext of Maṣlaḥah Essentially Pertains to the Means, Not the Origin

According to Al-Qarāfi (n.d., p. 32) *Shari'ah* rulings in terms of the resources of rulings are divided into two categories:

First: *Shari'ah* rulings that have been legislated by their *Maqāsid* -based rulings which include the broader interests or harms the ruling aims to achieve or eliminate. These rulings are based on the objective of the *Shari'ah* (*Maqāsid*) either favorably or adversely. *Maqāsid* -based rulings address interests or harms directly related to the act itself, such as murder, adultery, or *shirk*. These rulings are inherently tied to the self-existence of harm or benefit within the act. When the *Shari'ah* legislated the ruling, it did so with the public and the general interest in consideration.

Second: *Shari'ah* rulings that have been legislated by their means-based rulings; the means are the ways in which the decisions that lead to prohibition and permissibility are interpreted, and the details of the rulings are ways to accomplish *maṣlaḥah* as well as ways to obtain benefits. Prohibitions in means-based regulations may be overridden by a preponderant *maṣlaḥah* or to prevent harm. However, compared to *Shari'ah* decisions whose regulation is founded on *Maqāsid*-based rulings; this form of provision is inferior. For that reason, the best means are those that lead to the best objectives, and the worst means may lead to adverse outcomes. Because the means are subordinate to the objective in the ruling, whenever the objective is disregarded, the means lose significance.

The prohibition of rulings may be due to its self-objective, such as the prohibition of murder, adultery, sodomy, *shirk*, etc., because of the very self-existence of damages in the act. The prohibition of rulings may also be due its means such as the prohibition of drinking alcohol, the prohibitions of *ihrām* for pilgrims and Umrah performers, and wearing silk for men and others. The rule is that whenever the objectives is not considered, the means are not considered, but the means of the prohibition may not be prohibited if it leads to a preponderant *maṣlaḥah*, such as reaching the redemption of prisoners by paying money to the disbelievers, which is forbidden for them to benefit from it, based on the fact that they are addressed by the branches of *Shari'ah*, and as paying money to a man who spend it in a prohibited way so that he does not commit adultery with a woman if she is unable to pay it for him except by doing so, but Imam Mālik stipulated that it should be to a light problem, to make it possible to obtained the preponderant interest (*maṣlaḥah*) over the harm (*mafsadah*)(Al-Qarāfi, n.d.)

In the exceptional circumstances of any legal ruling, the public interest (*maṣlaḥah 'āmmah*) is considered primarily for matters that are prohibited by means-based regulations, not with regard to matters that are prohibited due to objective-based regulations., pursuant to the rule:

كُلُّ مَا حَرَّمَ تَحْرِيمَ الْوَسَائِلِ فَإِنَّهُ يَبَاحُ لِلْمَصْلَحَةِ الرَّاجِحَةِ.

Translation: Whatever prohibits in the prohibition of means can become permissible under the justification of preponderant interest. (Al-Jawziyyah, 1983)



Conversely, a notion of obstructing the harm can be used to the prohibiting of matters by means, and the rule says (Al-Jawziyyah, n.d.):

ما حَرَّمَ سَدًّا لِلذَّرِيعَةِ أَيْبَحُ لِلْمَصْلَحَةِ الرَّاجِحَةِ

Translation: What is forbidden from the notion of obstructing the harm is permissible under the justification of the preponderant interest.

The significance for *ijtihād* is to balance the means and objectives. Scholars engaged in *ijtihād* must carefully balance the means and objectives by giving priority to preponderant *maṣlahah*. As well, context analysis is needed to ensure that the means employed are aligned with the broader objectives and do not undermine them.

Therefore, certainty and clarity are paramount in establishing *maṣlahah*'s existence for legal rulings. This parameter underscores the need for a robust foundation, free from uncertainty and doubt, when considering the public interest in exceptional circumstances. This ensures a principled and sound application of *maṣlahah* in Islamic jurisprudence.

Fourth Parameter: The Distinctive Rulings Made Based on the Maṣlahah Should Not be in Conflict with Higher Sharī'ah 's Objectives

This parameter is ensured to prevent conflict between the objectives of *Sharī'ah*, which are tied to the five necessities in preserving religion, soul, mind, offspring, honor, and money and the distinctive rulings made on the grounds of the *maṣlahah* (al-Zuhaili, 1985, p. 68).

If the exceptional ruling is adopted in a particular case under the pretext of the *maṣlahah*, it should be considered: does it conflict with the five necessities or not? In the event of a conflict, this exceptional ruling shall be revoked to maintain harmony with *Sharī'ah*'s foundational objectives. Al-Tayeb (1994) opined while talking about justifying the public interest: "The reference in providing ease (*taysīr*) and facilitating (*rukhsah*) is always to serve the *maṣlahah* of Muslims, which is in line with *Sharī'ah* and does not violate a fixed legitimate *Sharī'ah* objectives". It is noted that it is required that the *maṣlahah* and the *Maqāsid Sharī'ah* not conflict in order to provide any distinctive rulings in a case. To conclude, ensure that exceptional rulings, while addressing specific circumstances, uphold the foundational principles of *Sharī'ah* and do not compromise the broader objectives.

Fifth Parameter: When considering the Maṣlahah for a Legal Ruling, the Muslims' Authority, Their Representatives, or Something Indicating Their Approval Must Be Obtained

Determining a *Sharī'ah* ruling on an issue under the pretext of *maṣlahah* must be issued by Muslim rulers or their competent authorities or its representatives, or by means that an official approval has been obtained from their side. Opening the door to prosecution under the pretext of the *maṣlahah* from any individual Muslims without authority is a serious matter that ultimately leads to the freedom of everyone to say the legal ruling according to his will and desire, and it is further distorted because they will conflict in perception and opinions.



One of the scholars who put this parameter is Shaikh al-Islām Ibnu Taimiyyah Al-Harrānī (1987) when he discussed on the issue of taking the land of the endowment for the mosque for the purpose of expanding the road or taking the land of the road to expand the mosque, and he opined that the decision is subject to the rulers of Muslim affairs, although some scholars has disagreed about it. This parameter complies with *Sharī'ah*, which states that the actions of Muslim rulers must abide by the *maṣlahah* in accordance with the maxim:

تصرف الإمام على الرعية منوط بالمصلحة

Translation: The conduct of the imam on the parish depends on the *maṣlahah*." (Al-Zarkasyi, n.d.).

By seeking approval, this parameter ensures a structured and unified approach to *maṣlahah*-based rulings, maintaining order and adherence to authoritative guidance. This fifth parameter plays a crucial role in the regulatory framework of Islamic finance practice in Malaysia, specifically in the context of utilizing *maṣlahah* as a mechanism for Shariah rulings. This parameter emphasizes that decisions based on *maṣlahah* must be made or approved by recognized authorities, such as the Shariah Advisory Council of Bank Negara Malaysia (BNM) or the Shariah Advisory Council of the Securities Commission Malaysia and both have the authority to control rulings on matters involving *maṣlahah*. This requirement is crucial to prevent unauthorized individuals or entities from making subjective interpretations that could lead to inconsistencies or non-compliance with Shariah principles. By mandating that rulings must come from recognized bodies, the parameter ensures that decisions are legitimate, credible, and in line with Malaysia's legal and regulatory framework for Islamic finance.

Sixth Parameter: The Distinctive Ruling Issued Under the Pretext of Maṣlahah Must Be Issued by a Competent Body in the Process of Ijtihād

One of the justifications for the adoption of this parameter is that distinctive rulings based on the *maṣlahah* must be made based on a genuine *ijtihād*. However, not everyone is competent to perform *ijtihād*, and *ijtihād* from those who lack competence could cause *Sharī'ah* rulings to fluctuate and become distorted due to ignorance and *ijtihād* performed without condition and controls.

Al-'Ubādī (1986, p. 1388) referred to this parameter while talking about special conditions for taking people's money based on *maṣlahah*, and he stressed the necessity of the *ijtihād* in the matter should come from mujtahids, who have the competence to perform *ijtihād* that meets all its specific conditions. He said: "If a Muslim is obligated to embrace Islamic law as the basis for his legislative reasoning and as a standard by which he should not deviate, then his actions should be in accordance with the rulers and the authority. He should adhere to resolution by *collective ijtihād* (*ijtihād jamā'ī*) from competent scholars and technical experts, in addition to considering his own observations of the facts, causes, and consequences of the matter. This is a legitimate act that must be addressed, and it should not be contradicted or denied by anyone, even if it comes from some jurists and mujtahids who he did not agree with but who have been backed up by other members



of their peer group. This is because opposing the rulers in this way could spark conspiracy or even raise questions about the legitimacy of the rulers' actions, resulting in an imbalance in the unity of opinion that is very crucial for the consolidation of authority between the ruler and the parish".

Relying on the *maṣlahah* as a basis for issuing *Shari'ah* rulings demands a profound understanding of *Shari'ah* and its divine texts, as well as the ability to assess the stages of *maṣlahah* and evaluate comparisons across all stages. With considering the *maṣlahah* – in the words of Nasir, (1986, p. 1244) "...since the legislative process is based not only on *ijtihād* but also on understandings derived from the induction and study of divine texts and traditions, followed by elaboration and evaluation within the context of the circumstances and realities, without neglecting the discrepancies contradictions, conflicts, or weaknesses that some people may perceive in the interpretation of some divine texts". Therefore, only individuals who hold a particular ability namely, the competency of *ijtihād* are qualified to make decisions about ruling based on *maṣlahah*. To maintain order and prevent arbitrary rulings, seeking approval from competent authorities for *maṣlahah*-based decisions, and ensure *ijtihād* is conducted by individuals with the requisite expertise.

Conclusion

As a result, researchers believe that these utilizing the pretext of *maṣlahah* need to be improvised and monitored, especially in the field of Islamic financial system, where they need to be precisely and carefully studied in order to determine the origins, paths, and regulations. This matter can be approached from an another viewpoint, whereby *maṣlahah* was viewed as to collaborate with the text rather than superseding it, obstructing or diverging from it. This is accomplished by means of the following:

i. Establishing trust in the competency of the regulatory body members and the expertise of the Fatwa Committee in making decisions

The entrust should be afforded to the *Shari'ah* committees and the *Shari'ah* boards, who's their membership has been appointed by the government to uphold regulations pertaining to the *Shari'ah* in Islamic financial transactions in Malaysia. These committees and boards include the *Shari'ah* Advisory Council of Bank Negara Malaysia, Syariah Advisory Council of the Security Commission, the National Iftaa Committee, and *Shari'ah* committee members and the secretariat of the Bank.

The members of the committee composing scholars and highly qualified personal for the position, gaining expertise, experience, and awareness of the realities of banking particularly as it relates to Malaysian practice. They conducted extensive and rigorous research on every case until came to the decisions of the resolution they agreed upon aligned with *Shari'ah* principles. Therefore, all judgements issued by bodies which in on the authority of *maṣlahah* are impossible to perceived that be based merely on the abstract human mind and on psychological effects, as they will not unanimously acknowledge *mafsadah* (harm) for the ummah.



ii. Exceptions as an approach to the implementation of the divine text (naş)

Some may think that providing exceptions on the basis on *maşlahah* equates to deviating from the text or analogy (*al-qiyās*) to *maşlahah* or as making *ijtihād* in the text's existence, which is not the case, since violating sanctity in cases of compulsion or necessities — such as the fear of dying — is to implement the great text (*naş*) rather than to deviate from it. The legal texts generally contain the rules of facilitating people (*al-taysīr*) and the permissibility of breaching the texts in necessities. Therefore, this adoption is understood to be sticking to the general texts as occurs in the public interest (*maşlahah 'āmmah*), or it is such as specifying the general allocation (*takhsīş al- 'ām bi al-khās*).

iii. Maşlahah's Justification Based on Judicious Policy (Siyasah Shar'iyah) and The Intent of Reform (Islah)

On occasion, the political judicious policy (*siyāsah shar'iyah*) serves as the basis for *maşlahah*'s justification rather than specifying the general allocation by *maşlahah* (*takhsīş al- 'ām bi al-maşlahah*). It is well-established that the reach of Islamic financial transactions and its pronouncement affects more than just individuals; thus, the State's and nation's policy plays a significant role when determining what constitutes an Islamic pronouncement. Pursuant to that, addressing the political judicious policy (*siyāsah shar'iyah*) is the fundamental principle of the public interest (*Maşlahah 'Āmmah*). The role of the government or regulator is to handle public affairs well in accordance with the demands of many variables. It is founded on the politically judicious policy (*siyāsah shar'iyah*) and does not come under the general allocation specification (*takhsīş al- 'ām*), as the latter implies that the specified text must be always adhered to and will never be deviated.

Pursuant to that, comes the role of reform (*al-İslāh*) in a gradual way to all of the pronouncement elements, this reform's goal is to eliminate harm (*daf'u al-mafsadah*) as stated in the meaning of *Maqāşid Sharī'ah* and facing impairment in Islamic financial transactions, thereby making the pronouncement feasible and in align with the current system. If it is argued that the reasoning behind the *maşlahah* basis makes it forbidden as a deceptive way to stray from clear, explicit, and definitive texts, we clarify the fact that the reasoning behind the *maşlahah* is essentially a method of attaining legal text (*naş*) and applying it but in a stage-by-stage manner, not a means of disabling the texts to permit what God has forbade.

iv. Protecting the Maşlahah of People is the Greatest Objectives in Transaction Contracts

Meeting people's needs and protecting their interests generally is one of the ultimate significant and crucial goals of financial transactions. Regarding the general principles of contracts, which aims to take into account the interests of parties, as God has mandated righteousness, prohibited harm, and dispatched His messengers to fulfill the interests of mankind and eradicate harm or lessen it.

The methodology for this approach is known as *Fiqh al-Maqāşidi*, and it allows to interpret legal texts (*naş*) in true way that matches people's realities in various circumstances so as to meet their needs and desires. This goes against the approach of some jurists who froze at the literalness of the texts, which leads to the disruption of the text meanings, that makes people alienate from this approach due to difficulties and distress. This goes against the approach of some jurists who



froze at the literality of the texts, which leads to the disruption of the text meanings, that makes people alienate from this approach due to difficulties and distress.

References

- ‘Abd Al-Salām, A.-I. (1991). *Qawā‘id al-Aḥkām Fī Maṣālih al-Anām* (2nd ed., Vol. 2). Cairo: Maktabah Al-Kulliyāt Al-Azhariah.
- Abdullah, M. N. (2018). *Resolutions of the Shariah Advisory Council (SAC) of Bank Negara Malaysia in Islamic Financial Transactions: An Evaluative Study on Maqāsid Al-Sharī‘ah* (PhD thesis). International Islamic University Malaysia, Kuala Lumpur.
- Abū Zaid, A. al-A. (2006, August). *Al-Maṣālih al-Insāniyyah Wa al-Aḥkām al-Syar‘iyyah Fawāid al-Maṣārif Namūzajan*. Paper presented at Nadwah Maqāsid al-Syari‘ah Wa Sabl Taḥqīquha Fī al-Mujtama‘at al-Mu‘asārah, Kuala Lumpur, Malaysia.
- Al-Ansāri, Z. (n.d.). *Asnā al-Maṭālib Fī Syarh Raud al-Tālib* (Vol. 1). Cairo: Dār Al-Kutub Al-Islāmī.
- Al-‘Attar, H. (n.d.). *Hasyiyah al-‘Ator ‘Ala Syarh al-Jalal al-Mahalli “Ala Jam‘i al-Jawami”* (Vol. 2). Beirut: Dar al-Kutub al-Ilmiah.
- Al-Fauzān, S. bin M. (2014). *Taf‘īl al-Maqāsid Fī al-Māliyah al-Islāmiah: al-Ta‘ṣīl Wa al-Taṭbīq*. Paper presented at Al-Nadwah al-‘Alamiyyah al-Khāmisah ‘An al-Fiqh al-Islāmiah Fī al-Qarn al-‘Ishrīn, Kuala Lumpur, Malaysia.
- Al-Ghazālī, A. H. (1968). *Syifa‘ al-Ghalīl* (1st ed.). Baghdad: Matbaah Al-Irsyād.
- Al-Ghazālī, A. H. (1993). *Al-Mustasfā* (1st ed., Vol. 1). Beirut: Dār al-Kutub al-‘Ilmiah.
- Alias, M. N., Abdullah, M. N., Kamis, M. S., Afandi, A. J., & Alias, N. (2024). Scientific approach as the basis for the formation of Maqāsid al-Sharī‘ah concept and principles: A comparative study. *Malaysian Journal of Syariah and Law*, 12(2), 350–363. <https://doi.org/10.33102/mjssl.vol12no2.568>
- Al-Jawziyyah, I. Q. (1983). *Raudah al-Muhibbīn Wa Nuzhāh al-Mushtaqīn* (1st ed.). Beirut: Dār Al-Kutub Al-‘Ilmiyyah.
- Al-Jawziyyah, I. Q. (1991). *I‘lām al-Muwaqqi‘īn ‘An Rabb al-‘Alamīn* (1st ed., Vol. 2). Beirut: Dār al-Kutub al-‘Ilmiyyah.
- Al-Mardāwī, A. (2000). *Al-Tahbir Sharh al-Tahrir Fī Uṣūl al-Fiqh* (1st ed., Vol. 1). Riyadh: Maktabah Al-Rusyd.
- Al-Qarāfī, S. (n.d.). *Al-Furūq: Anwar al-Burūq Fī Anwā al-Furūq* (Vol. 2). Cairo: ‘Ālim Al-Kutub.
- Al-Raisūnī, A. (2005). *Al-Bahs Fī Maqāsid al-Syari‘ah Nash‘atuhū Wa Taṭawwiruhū Wa Mustaqbiluhū*. Paper presented at Nadwah Maqāsid al-Sharī‘ah, London, United Kingdom: Muassasah al-Furqān Li al-Turāth al-Islāmī.
- Al-Salāhāt, S. M. (2003). *Al-Qaṭ‘u Wa al-Zann Fī al-Fikr al-Uṣūlī* (1st ed.). Beirut: Maktabah al-Falāh.
- Al-Shāṭibī, I. M. (2005). *Al-Muwāfaqāt Fī Uṣūl al-Sharī‘ah* (7th ed., Vol. 5; A. Darraz, Ed.). Beirut: Dār al-Kutub al-‘Ilmiyyah.
- Al-Subkī, T. (1991). *Al-Ashbāh Wa al-Nazāir* (1st ed., Vol. 1). Beirut: Dār Al-Kutub Al-Ilmiyyah.
- Al-Suyūṭī, J. A. R. (1983). *Al-Radd ‘Alā Man Akhlada Ilā al-Ard Wa Jahila ‘Anni al-Ijtihād Fī kull ‘Asr Fard*. Beirut: Dār al-Kutub al-‘Ilmiyyah.
- Al-Tayeb, S. (1994). Al-Akhzu Bi al-Rukhshah Wa Hukmuhū. *Journal of Majma‘ al-Fiqh Al-Islāmiyy, International Islamic Fiqh Academy*, 8, 362–388.
- Al-‘Ubādī, A. al-S. (1986). *Naz‘un al-Mulkiah al-Khāssah Li al-Manfa‘ah al-‘Āmmah. Majallah Majma‘ al-Fiqh al-Islāmī al-Tābi‘ Li Munazzamah al-Mu‘tamar al-Islāmī*, 2(4), 995.



- Al-Zarkasyī, B. (1985). *Al-Manthūr Fī al-Qawā'id al-Fiqhiyyah* (2nd ed., Vol. 1). Kuwait: Wizārah al-Awqāf al-Kuwaitiyyah.
- Al-Zuhailī, M. M. (2006). *Al-Qawā'id al-Fiqhiyyah Wa Taṭbiqātuhā Fī al-Mazāhib al-Arba'ah* (1st ed.). Damascus: Dār Al-Fikr.
- Al-Zuhailī, W. M. (1985). *Nazāriyyah al-Darūrah al-Shar'iyyah Muqāranah Ma'a al-Qanūn al-Waḍ'i* (1st ed., Vol. 1). Beirut: Muassasah Al-Risālah.
- Bank Negara Malaysia. (2010). *Shariah Resolution in Islamic Finance* (2nd ed.). https://www.bnm.gov.my/documents/20124/9198675/shariah_resolutions_2nd_edition_EN.pdf
- Bank Negara Malaysia. (2024). *Hājah and Darūrah Policy Document* (BNM/RH/PD 028-129). Malaysia: Bank Negara Malaysia.
- Creswell, J. W., & Poth, C. N. (2018). *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (4th ed.). Sage.
- Denzin, N. K., & Lincoln, Y. S. (2011). *The Sage Handbook of Qualitative Research* (4th ed.). Sage.
- George, M. W. (2008). *The Elements of Library Research: What Every Student Needs To Know*. Princeton University Press.
- Ibn Qudāmah, M. A.-D. (2002). *Rauḍah al-Nāzir Wa Jannah al-Manāzir Fī Uṣūl al-Fiqh 'Alā Mazhab al-Imam Aḥmad Ibn Ḥanbal* (Vol. 1). Beirut: Muassasah Al-Rayyān Li al-Tiba'ah Wa al-Nashr Wa al-Tauzī'.
- Ibnu Taimiyah Al-Ḥarrāni, A. bin A. H. (1987). *Al-Fatāwā al-Kubrā* (1st ed., Vol. 5). Beirut: Dār al-Kutub al-Ilmiyyah.
- Khalil, U. M. U. (2013). *Al-Maṣlahah al-'Āmmah Wa Athāruha 'Alā Taghyīr al-Aḥkām 'Inda al-Ulamā Al-Muslimīn*. *Journal of Dār al-Iftā' Al-Miṣriyyah*, 16(7), 342–378.
- Muhammad, M. A. M. (2023). *Al-Maqāsid al-Sharī'ah Li al-Waqf Al-Islāmiyy wa al-Athār Al-Mutarattabah 'Alaiḥā*. 106–82. (3)2. مجلة الدراسات الأفروآسيوية. Retrieved from https://journals.ekb.eg/article_339032_8d697faf6aed7d9264cd39e05b9b3002.pdf
- Nasir, M. al-H. (1986). *Al-Islām Wa Intizā' al-Mulk Li al-Maṣlahah al-'Āmmah*. *Majallah Majma' al-Fiqh al-Islāmī*. *Munazzamah al-Mu'tamar al-Islāmī*, (4), 1244.
- The National Council Fatwa Muzakarah Committee. (1994). *Compilation of the Fatwa 1969–1990* (JKF Paper No. 4/35/94). Malaysia: The National Council for Islamic Religious Affairs of Malaysia, Prime Minister's Department.

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