THE ENGINEERING OF ISLAMIC FINANCIAL PRODUCTS THROUGH THE FUNDAMENTAL OF THE MAQASID AL-SHARI'AH

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Abstract— The purpose of this study is to identifying the perception on the *Shari'ah* Advisory Boards (SABs) in Islamic financial institutions in order to verify and validate of the basic fundamentals of the *Maqasid al-Shari'ah* Framework (*MS*F), which include the Islamic Financial transactions (*Fiqh al-Mu'amalat*), *fiqh* maxims (*Qawa'id al-Fiqhiyyah*) and *fiqh* priorities (*Fiqh al-Aulawiyyat*). The objectives of *Shari'ah* (*Maqasid al-Shari'ah*) are the key to better understand the *Shari'ah* in its true perspective. Hence, this paper will explain the basis fundamentals of the *Maqasid Shari'ah* as a guideline for *Shari'ah* scholars to arrive at a more precise *ijtihad* in their assessment of Islamic financial products development. Hence, this study give recommendation the distinctive fundamentals of *Maqasid Shari'ah* model should have an Islamic financial transactions (*fiqh al-mu'amalat)*, *fiqh* maxims *(qawa'id al-fiqhiyyah)* and *fiqh* of priorities (*fiqh al-aulawiyyat*), in assisting the *Shari'ah* scholars producing more appropriate *ijtihad* in Islamic banking and finance products matters, which contribute towards promoting justice and welfare of public interest (*maslahah*) as well as in promoting awareness of people's needs.

Keywords- Islamic Financial Products, Maqasid Al-Shari'ah, Islamic Financial, Fiqh Maxims, Fiqh Of Priorities, Public Interest.

I. INTRODUCTION

The objectives of Shari'ah (*maqasid al-Shari'ah*) is viewed by the contemporary Muslim scholars as an alternative tool to emphasize on issues relating to the public interest (*maslahah*), especially with respect to Islamic financial transactions. The reorientation of Islamic banking and finance products based on the *maqasid al-Shari'ah* would contribute towards promoting justice and welfare of public interest (*maslahah*) as well as in promoting awareness of people's needs.

Fiqh al-mu'amalat means knowledge of *Shari'ah* rulings in relating to human actions and activities transaction in the light of public interest (*maslahah*), in order to solve people needs and settlement of dispute between them, which derived directly from detailed evidences in the texts, or extended through reasoning from general propositions of the *Shari'ah*. For example, the forward sales (*bay'al-salam*) contract which is one of the types of unknowns sales (*bay' al-gharar*) [1] was permitted as a special concession (*rukhsah*) to meet people need and public interest (*maslahah*) [2]. *Bay' al-salam* is a sale of an object which is not available at the time of the conclusion of the sale but will deliver in a future on a fixed future date. The price is, however, to be paid immediately during the session of the contract [3]. This permissible is based on the customarily practiced (*al-'urf* or *al-'adat*) which responded to the public needs (*al-hajiyyat*). According to the *fiqh* maxims (*al-qawa'id al-fiqhiyyah*) "Need is treated as necessities, whether of a public or private nature." (*al-hajat: tunazzalu manzilatu al-darurah, 'ammah kanat aw khassah*) [4]. Therefore, when the need was developed into society need in term of public interest (*maslahah*), it will become necessities *(al-darurah).* The permissible of *bay'al-salam* is related to universal purpose of the Qur'an, such as to removal of hardship (*raf' al-haraj*). Allah (swt) says: "*Allah never intends to impose hardship on people*" [5]. Allah (swt) also says: "*Allah wants to lighten your burdens: for man has been created weak*" [6]. This Qur'anic verse clearly stated that Allah (swt) put priority of the facilities over the hardship [7]. Hence, the rule of the *fiqh* of priority (*Fiqh al-Aulawiyyat*) stated "*Putting precedence of lightness and convenience over the hardship*". This *fiqh* of priority is also being support by the Prophet (saw) *hadith* as: "*the best of your religion is the lightest*" [8].

Therefore, the basic fundamentals of the objectives of *Shari'ah* (*maqasid al-Shari'ah)*, are constituted of three basic fundamentals components, namely Islamic Financial transactions (*Fiqh al-Mu'amalat), Fiqh* Maxims *(qawa'id al-fiqhiyyah*) and *fiqh* of priorities (*Fiqh al-Aulawiyyat*).

II. PROBLEM STATEMENT

In the process of understanding the objectives of *Shari'ah (maqasid al-Shari'ah),* and their application in evaluating products of Islamic financial institutions, some of the *Shari'ah* scholars and professionals in Islamic financial institutions especially among the *Shari'ah* Supervisory Boards are found to be faced with the issue of maturity in Islamic jurisprudence (*fiqh*) [9], by emphasizing exclusively on the technicality aspect of the classical contract and at the same time are too liberal by using an unregulated theory of *Maqasid Shari'ah.*

In order to solve the above problem, this research attempts to study the perception on the *Shari'ah* Advisory Boards (SABs) in Islamic financial institutions in order to verify and validate of the fundamental of the *Maqasid al-Shari'ah* Framework (*MS*F).

Since each school of law has its own modes of legal reasoning (*ijtihad*) in resolving certain issues related to Islamic Financial transactions (*Fiqh al-Mu'amalat*), the contemporary Muslim jurists of the four major schools of law are not unanimous in their deduction of *fiqh* rulings (*ahkam al-fiqhiyyah*) and occasionally reached different perspectives on Islamic financial products, such as rulings(*al-ahkam*) on a certain issues of Islamic financial products. It is certain that guidelines prescribed in the fundamental of the *maqasid al-Shari'ah* would enable those scholars to come up with right assessment and proper solutions to the financial products development.

III. LITERATURE REVIEW

As mention earlier, the *Shari'ah* are covers all areas including faith, worship, economic, political, and social cultural aspects of human life in which *Shari'ah* is the law itself, while *fiqh* is a knowledge of *Shari'ah* law. According to Kamali [10] in his book on *Principles of Islamic Jurisprudence*, *fiqh* is the end product of *Islamic legal methodology (usul al-fiqh),* and yet the two are constituted separate disciplines. However, in its early development, *fiqh* precedes the *usul al-fiqh* and that it was only during the second Islamic century that important developments took place in the field of *usul al-fiqh*. Thus, *fiqh al-mu'amalat* means knowledge of *Shari'ah* rulings in relating to human actions and activities transaction in the light of public interest (*maslahah*), in order to solve people needs and settlement of dispute between them, which derived directly from detailed evidences in the texts, or extended through reasoning from general propositions of the *Shari'ah*. Al-Qawa'id al-Fiqhiyyah or Fiqh maxims are general rules of *fiqh*. These *fiqh* maxims have a great role in the formation of the objectives of *Shari'ah (maqasid al-Shari'ah)* because they are used as general principles to deduce many rules of *fiqh*. Mustafa al-Zarqa' mentioned that although these *fiqh* maxims are general principles, they facilitated and contributed toward enriching wide range of *fiqh* rulings, either major or minor issues in *fiqh*. It is stated in the *Majallah* that *fiqh* maxims are designed to facilitate a better understanding of the *Shari'ah* as well as the *maqasid al-Shari'ah* and the judge may not base his judgment on them unless the maxims in question are derived and supported by specific texts (the Qur'an or *Sunnah*) [11].
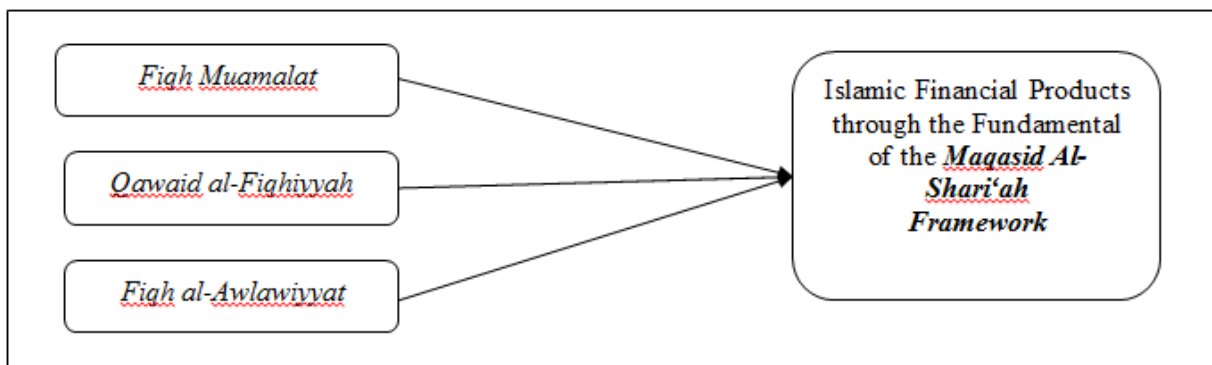
Fiqh al-awlawiyyat provides a strong base for the application of the objectives of *Shari'ah* (*maqasid al-Shari'ah)*, especially in measuring and determining preference between benefits (*manfa'ah*) and harms (*mafasid*). As mentioned earlier in the chapter two, the word *fiqh* is refer to the knowledge of the Islamic legal rules (*'ilm al-ahkam al-Shari'*). As for *al-awlawiyyat,* al-Qaradawi defined it as put things fairly in appropriate manner, whether it be rulings, values or deeds [12]. Then prioritise what should be given priority based on the *Shari'ah*, in which based on the light of revelation and intellect. As conclusion, the priorities of Islamic jurisprudence *(Fiqh al-awlawiyyat)* is to strengthen the understanding of the objectives of *Shari'ah (maqasid al-Shari'ah).* It is especially when to measuring of *maslahah* and *mafsadah* in order to provide justice and fairness into public and society life.

IV. METHODOLOGY

Total populations of listed Shari'ah Advisors with Association Islamic Banking Institutions Malaysia (AIBIM) are one hundred and thirteen (113). From the total population of one hundred and thirteen (113), the probability of sample size is seventy-seven (77). The determination of sample size (ss) in this study is through the formula: $ss = Z2^* (p)^* (1-p) / C2$, where Z = Z value (e.g. 1.96 for 95% confidence level); p = percentage picking a choice, expressed as decimal (.5 used for sample size needed) c = confidence interval, expressed as decimal (e.g., .05 = ±5). From the seventy-seven (77) Sample size, the confidence level is 95% with confidence interval is 0.05 under percentage 5% [13]. However, according to Roscoe (1975) [14], sample sizes larger than 30 and less than 500 are appropriate for the descriptive study. Therefore, this research was used 80 sample size, which consists of the *Shari'ah* advisory boards of different institutions. The sample consisted of 60 academicians, 15 practitioners and 5 regulators.

The questionnaire has been explores the *Shari'ah* Advisory Board perceptions regarding the basic fundamentals of the objectives of *Shari'ah (maqasid al-Shari'ah)*. This section contained of eighteen (18) questions which grouped into three factors: first factor is the *Fiqh* (Islamic Jurisprudence) with seven (7) questions; second factor is the *Qawa'id al-Fiqhiyyah* (Fiqh Maxims) with six (6) questions; third factor is the *Fiqh Awlawiyyat* (the priorities of Islamic jurisprudence) with five (5) questions. The variables in this study can be divided into two parts which is dependent variable (DV) and independent variable (IV). So, Islamic Financial Products through the Fundamental of the *Maqasid al-Shari'ah* Framework as dependent variable while the Islamic Financial transactions (*Fiqh al-Mu'amalat*), fiqh maxims (*Qawa'id al-Fiqhiyyah*) and fiqh priorities (*Fiqh al-Aulawiyyat*) as independent variables as in table 1:

TABLE 1:   THE FUNDAMENTAL OF THE *MAQASID AL-SHARI'AH*

The population of this study, there are two types of sampling designs: Probability and nonprobability sampling. For this research, Probability sampling is used by selecting those who directly involve in *Shari'ah* Advisory and Supervisory Boards, namely *Shari'ah* regulatory boards' members and members of *Shari'ah* advisory committees who were registered under the Association Islamic Banking Institutions Malaysia (AIBIM). From the Probability design, the restricted or complex probability sampling design has been used, in order to stratify the samples. From the group population of *Shari'ah* Advisory Board (SAB), the sample has been subgroups of element within the population, namely regulatories, practitioner, academicion and other. The design purpose is to identify the perception from each samples on the verifying and clarifying the model of *Maqasid al-Shari'ah Framework* (*MS*F). Hence, every element in the population has a known and equal chance of being selected as a subject.

V.   ANALYSIS AND FINDING

A. Reliability Analysis

First, as a preliminary, a reliability test was conducted. Reliability analysis is performed to assess the reliability of data obtained through questionnaires distributed to respondents. It aims to aid and facilities for researchers to check whether the data collected can be trusted or not. According to Sekaran (2003), the validity of the approximate value of 1.00 is the best. The reliability of less than 0.60 was considered as the weak and the values were within 0.60 is an acceptable value and the value that exceeds the value 0.70 was considered as good reliability. Reliabilities of data of variables were analyzed by SPSS software, the results as following:

TABLE 2.   RELIABILITY TEST OF THE *FIQH MU'AMALAT, FIQH MAXIMS, FIQH AWLAWIYYAT* VARIABLES.

No	Variables	N of the item	Cronbach's Alpha
1	*Fiqh mu'amalat*	3	.836
2	*Fiqh* Maxims	3	.808
3	*Fiqh awlawiyyat*	3	.856

Table 2 showed that the Cronbach's Alpha values of the *fiqh mu'amalat*, *fiqh* maxims and *fiqh awlawiyyat*, are more than 0.80, were considered as a good reliability. It is shown that those scales are consistent results and is therefore reliable and acceptable.

B. Exploratory Factor Analysis (EFA)

Exploratory Factor Analysis (EFA) was performed to analyse the interrelationship among all latent constructs. The objectives of performing EFA were to reduce the number of variables (data reduction) and to detect the underlying structural relationships between variables, i.e., structure detection. Table 3 that follow show the results of EFA with factor loadings using Principal Axis Factoring and varimax rotation for the constructs of interest. Only items with loadings of 0.30 and above are reported here.

TABLE 3. FACTOR LOADINGS FOR EXPLORATORY FACTOR ANALYSIS WITH PRINCIPAL AXIS FACTORING AND VARIMAX ROTATION FOR *FIQH AL-MU'AMALAT, QAWA'ID AL-FIQHIYYAH* AND *FIQH AWLAWIYYAT*

Items	Factor Loading		
	Fiqh Awlawiyyat	*Qawa'id al-Fiqhiyyah*	*Fiqh al-Mu'amalat*
B8			.755
B9			.727
B10			.885
B11		.889	
B12		.587	
B13		.853	
B14	901		
B15	.679		
B16	.872		

KMO and Bartlett's Test

Kaiser-Meyer-Olkin Measure of Sampling Adequacy.			.614
Bartlett's Test of Sphericity		Approx. Chi-Square	344.400
		df	36
		Sig.	.000

C. Reliability Analysis

In this study, table 4 provided the mean and standard deviation scores of variables. To answer the items, respondents were asked to rate each of the eight variables based on the likert scale. The likert scale is designed as the rating scale to examine how strongly subjects agree or disagree with statements on a 5-point scale with the following anchors:

Strongly Disagree 1	Disagree 2	Neither Agree Nor disagree 3	Agree 4	Strongly Agree 5

Based on the table 4 below, the means scores for the three variables shows the positive high mean values which ranged between 4.50 and 4.73.

TABLE 4.   DESCRIPTIVE STATISTICS ON MEAN AND STANDARD DEVIATION FOR THREE VARIABLES

Variables	N	Mean	Std. Deviation
Fiqh al-Muʿamalat	80	4.4958	.43411
Qawaʿid Fiqhiyyah	80	4.7042	.38243
Fiqh Awlawiyyat	80	4.7292	.39367

In table 5 to table 7, it explores the perceptions among *Shariʿah* Advisory Boards members regarding the fundamentals of the objectives of *Shariʿah (Maqasid al-Shariʿah)*, namely *fiqh muʿamalat, fiqh* maxims, *fiqh awlawiyyat*. The mean and standard deviation for the fundamentals of the objectives of *Shariʿah (Maqasid al-Shariʿah)* are as follows:

TABLE 5.   DESCRIPTIVE STATISTICS ON MEAN AND STANDARD DEVIATION FOR THE *FIQH MUʿAMALAT*

Items	N	Mean	Std. Deviation
The fiqh rulings (ahkam al-fiqhiyyah) concerning to Islamic financial products should be viewed in light of public interest (maslahah) to resolve the conflicting opinions among fiqh scholars with regards to the Shariʿah rulings (ahkam al-Shariʿyyah).	80	4.55	.501
The development of Shariʿah-compliant products should be based on the classical theory of contract together with the principle of maslahah.	80	4.51	.503
Any fiqh rulings (ahkam al-fiqh) in Shariʿah-compliant products should be scrutinized in the light of maqasid, based on the actual problem of fiqh (al-fiqh al-waqiʿee).	80	4.43	.497
Valid N (listwise)	80		

As tabulated in table 5, the average means is 4.496, which indicates that overall respondents were agreed in terms of Islamic Financial transactions (*Fiqh al-Muʿamalat*) towards *maqasid*-cum-*masalih* (the objectives of *Shariʿah* for the public interests) with standard deviation of 0.382. Most of respondents agreed that The *fiqh* rulings (*ahkam al-fiqhiyyah*) concerning Islamic banking and finance products should be viewed in light of public interest (*maslahah*) to resolve the conflicting opinions among *fiqh* scholars with regards to the *Shariʿah* rulings (*ahkam al-Shariʿyyah*), with mean value of 4.55 and .501 of standard deviation. Hence, the application of the classical theory of contract in developing Islamic banking and finance products should be scrutinized on the actual problem of *fiqh (al-fiqh al-waqiʿi)*, which is actually in conformity with the principle of *maslahah.* The mean value of each items are 4.51 and 4.43 with standard deviation of .503 and .497.

TABLE 6.   DESCRIPTIVE STATISTICS ON MEAN AND STANDARD DEVIATION FOR THE *FIQH MAXIMS*

Items	N	Mean	Std. Deviation
In the developing Shariʿah-compliant products, the Shariʿah scholars are required to have proper understanding of fiqh maxims and their relevant application in the contact of achievement of the objectives of Shariʿah (maqasid al-Shariʿah).	80	4.78	.420
Fiqh maxims related to certain aspects of maslahah should be utilized to develop new products in Islamic finance.	80	4.58	.497
One of the fiqh maxims state: "Harm is to be removed". If an Islamic financial institutions identifies any Shariʿah violation such as injustice, hardship and harm of public interest in its product activities, immediate action must be taken to rectify the	80	4.76	.428

transaction to removed those Shari'ah violation.	
Valid N (listwise)	80

As shown in table 6 above, the respondents gave second highest response with mean 4.76 on taking consideration to removed those *Shari'ah* violation such as injustice, hardship and harm of public interest in any Islamic financial product development, by using *fiqh maxims* through *maslahah* principles. To utilize *fiqh* maxims, the *Shari'ah* scholars are required to have proper understanding of *fiqh* maxims and their relevant application in the contact transaction, which in conformity with the *maqasid*-cum-*masalih* (the objectives of *Shari'ah* for the public interests). This item received a highest mean score of 4.78 with standard deviation of 0.420. Hence, the respondents agreed that *fiqh* maxims related to certain aspects of *maslahah* should be utilized to develop new products in Islamic finance industry, with mean score of 4.58 with standard deviation of 0.497. The overall perception of *fiqh* maxims (*qawa'id fiqhiyyah*) towards *maqasid*-cum-*masalih* (the objectives of *Shari'ah* for the public interests) strongly agreed with the average means of 4.70 and standard deviation of 0.382.

TABLE 7.   DESCRIPTIVE STATISTICS ON MEAN AND STANDARD DEVIATION FOR THE *FIQH AWLAWIYYAT*

Items	N	Mean	Std. Deviation
Fiqh awlawiyyat is very relevant in the development of Islamic financial products, especially in the context of maintaining the balance between the various benefit (manfa'ah) and harm (mafsadah) in the socio-legal requirements.	80	4.71	.455
Fiqh awlawiyyat could be used as a source of reference to uncover an appropriate judgment between serving material interests and the development of the spiritual values in Islamic financial products.	80	4.73	.449
Fiqh awlawiyyat should be given more consideration in the development of Islamic financial products to balance between benefit and harm.	80	4.75	.436
Valid N (listwise)	80		

The above table 7 shows the *Shari'ah* Advisory Boards agreed with the highest mean of 4.75, in which the *fiqh awlawiyyat* should be given more consideration in the development of Islamic financial products to balance between benefit and harm. It is very relevant in the context of maintaining the balance between the various benefit (*manfa'ah*) and harm (*mafsadah*) in the socio-legal requirements, with mean score of 4.71 and standard deviation of .455. *Fiqh awlawiyyat* also uncover an appropriate judgment between serving material interests and the development of the spiritual values in developing Islamic financial products. This item received a mean score of 4.73 with standard deviation of 0.449. Overall, the application of *Fiqh awlawiyyat* in developing Islamic financial products through *maqasid*-cum-*masalih* (the objectives of *Shari'ah* for the public interests) by *Shari'ah* Advisory Boards are very significant and important with mean value of 4.73 and standard deviation of 0.394.

VI.   CONCLUSION

As for the Islamic Financial transactions (*Fiqh al-Mu'amalat*), any *fiqh* rulings (*ahkam al-fiqhiyyah*) concerning to Islamic financial products, should be scrutinized on the actual problem of *fiqh* (*al-fiqh al-waqi'ee*), without undermining the classical theory of contract. This actual problems of *fiqh* should be viewed in light of public interest (*maslahah*) to resolve the conflicting opinions among *fiqh* scholars with regards the *Shari'ah* rulings (*ahkam* al-*Shari'yyah*). If an Islamic financial institutions identifies any *Shari'ah* violation such as injustice, hardship and harm of public interest in its product activities, *Shari'ah* scholars should apply the *fiqh* maxims related to *maslahah* principles to remove negative elements which against *Shari'ah* principles and values. Therefore, *Shari'ah* scholars are also required to have proper understanding of *fiqh* maxims and their relevant application in developing Islamic banking and finance products. In the contexts of maintaining the balance between the various benefit (*manfa'ah*) and harm (*mafsadah*), *fiqh awlawiyyat* should be given priority and proper consideration as a source of reference to resolve conflicting judgment in the assessment of Islamic banking and finance products.

REFERENCES
[1]   Al-Nawawi. (1392). Al-Manhaj Sharah Muslim bin al-Hajjaj. Beirut: Dar Ihya' al-Turath al-'Arabi. Vol. 10. pp. 156.
[2]   Al-Nawawi. (1392). Al-Manhaj Sharah Muslim bin al-Hajjaj. Beirut: Dar Ihya' al-Turath al-'Arabi. Vol. 10. pp. 471.

[3]   Nawawi, R. (1999). Islamic Law on Commercial Transactions. Malaysia: CT Publications. pp. 92

[4]   Sayuti (2005). Al-Ashbah wa al-Nazair. Beirut: Dar al-kutub al-'Ilmiyyah. Vol. 1. pp. 88.

[5]   The Quran, 22: 78

[6]   Roscoe, J. T. (1975). Fundamental research statistics for the behavioral sciences (2nd ed.). New York: Holt, Rinehart and Winston.

[7]   The Quran, 4: 28

[8]   Al-Karbuli, A. S. 'I. A. (2008). Fiqh Al-Aulawiyyat fi zilali maqasid al-Shari'ah al-Islamiyyah. Dar al-Tibah: Beirut. pp. 107

[9]   Al-Buti, M. S. R. (2008). Possible Ways to Achieve Uniformity in Fatwas on Finance in the Practice of Shari'ah Supervisory Boards. Bahrain: The seventh conference of Shari'ah boards of Islamic financial institutions, the Accounting and Auditing Organization for Islamic Financial Institutions AAOIFI.

[10] Kamali, H. (1991). Principles of Islamic Jursiprudence. Ilmiah Publishers Sdn. Bhd.

[11] Mahmassani, Subhi, Falasafat at-Tashri' fil-Islam: The Philosophy of Jurisprudence in Islam, Eng. Trans. Farhat I. Ziadeh, E.J. Brill Lieden 1961, p. 151

[12] Al-Karbuli, A. S. 'I. A. (2008). Fiqh Al-Aulawiyyat fi zilali maqasid al-Shari'ah al-Islamiyyah. Dar al-Tibah: Beirut. pp. 24

[13] Sekaran, U. (2003). Research Methods for Business: A Skill Building Approach (4th ed.). John Wiley & Sons, Inc, New York.

[14] Churchill, G.A. Jr. (1979). A Paradigm for Developing Better Measures of Marketing Constructs. Journal of Marketing Research, 16(1), pp. 64-73.