

OBJECTIVES OF THE *SHARĪ'AH* (*MAQĀSĪD AL-*
SHARĪ'AH)
AND THEIR APPLICATION IN ISLAMIC
FINANCIAL PRODUCTS

BY

WAN NAZJMI BIN MOHAMED FISOL

A Thesis submitted to the Kulliyyah Muamalat, in full fulfillment of the requirements for the
degree of Doctor of Philosophy
INSANIAH University College

©2015 WAN NAZJMI. All rights reserved

ABSTRACT

The fundamental objectives of the *Sharī'ah* or *maqāṣid al-Sharī'ah* are to ensure the well-being and welfare of mankind (*maṣlaḥah*; Pl. *maṣāliḥ*), both in this world and the hereafter. *Maqāṣid* are the key to better understand the *Sharī'ah* in its true perspective. Significantly, *maqāṣid al-Sharī'ah* can be seen as a comprehensive legal framework to unify the divergence of Islamic Islamic legal opinion (*ijtihād*) among the Muslim juristconsults (*Uṣūliyyūn*) of different schools of law. This study attempts to analyse views and legal opinions on the theory of *maqāṣid-cum-maṣāliḥ* (the objectives of *Sharī'ah* for the public interests) as a mediator (*wasīlah*) for establishing the fundamentals and features of an integrated form of *maqāṣid al-Sharī'ah*. In collecting the data from the library, the research used qualitative method to obtain reliable information on selected issues in Islamic banking products. Through a critical analysis of the *maqāṣid-cum-maṣāliḥ* theory, the study has successfully formulated an integrated *Maqāṣid al-Sharī'ah* Framework (*MSF*) as a well-defined "Model of *MSF*". The major component of *MSF* consists of Islamic financial transactions (*fiqh al-mu'āmalāt*), *fiqh* maxims (*qawā'id al-fiqhiyyah*), *fiqh* of priorities (*fiqh al-aulawiyyat*), Islamic legal methodology (*uṣūl al-fiqh*), Objective of Islamic economics, Objective of Islamic finance and the legal and social objectives. In order to verify the applicability of this *MSF*, quantitative method through closed-ended structured questionnaires was used to seek *Sharī'ah* scholars' view and opinion on selected issues of Islamic financial products such as *Bay' bi Thaman Ajil (BBA)*, *Bay' Tawarruq*, *Mushārahah Mutanāqishah*, *Muḍārabah* and *Mushārahah sukuk* contracts. The empirical part of analysis utilised three selected approaches, namely descriptive analysis, reliability analysis and exploratory factor analysis. Based on this analysis, the study has verified that the theory of *maqāṣid-cum-maṣāliḥ* via an integrated *Maqāṣid al-Sharī'ah* Framework (*MSF*) could be adopted by the *Shari'ah* scholars as guidelines and source of reference to deduce more precise *ijtihād* in the assessment of Islamic financial products.

ABSTRACT (BAHASA MELAYU VERSION)

Perkara asas bagi memenuhi matlamat atau objektif *Sharī'ah* (*maqāṣid al-Sharī'ah*) adalah untuk memastikan kesejahteraan dan kebajikan manusia (*maṣlaḥah*) di dunia dan akhirat. *Maqāṣid* merupakan kunci kepada kefahaman *Sharī'ah* dari perspektif yang sebenar. Jelasnya, *maqāṣid Sharī'ah* boleh dilihat sebagai satu rangka kerja perundangan yang komprehensif untuk menyatukan perbezaan *ijtihād* di kalangan *Uṣūliyyūn* yang terdiri daripada pelbagai *mazhab*. Oleh itu, kajian ini menganalisa pandangan dan pendapat mengenai teori *maqāṣid-cum-maṣāliḥ* (Objektif *Sharī'ah* untuk kepentingan umum) sebagai penentu (*wasīlah*) kepada *maqāṣid Sharī'ah*, yang terdiri daripada asas-asas dan ciri-cirinya. Pendekatan kaedah yang digunakan bagi menganalisa teori tersebut ialah melalui kaedah kualitatif yang melibatkan penyelidikan perpustakaan. Melalui analisa teori *maqāṣid-cum-maṣāliḥ*, maka penyelidik telah berjaya menghasilkan satu bentuk model *maqāṣid al-Sharī'ah* yang jelas yang dikenali sebagai "Model MSF". Model ini boleh digunakan oleh para ulama *Sharī'ah* sebagai sumber rujukan terhadap penilaian dan pembangunan produk-produk kewangan Islam. Bagi mengesahkan kesesuaian Model *Maqāṣid Sharī'ah* tersebut, penyelidik telah menggunakan kaedah kuantitatif melalui kajian soal selidik secara berstruktur untuk mendapatkan pandangan dan pendapat para ulama *Sharī'ah*. Analisis ini telah menggunakan tiga pendekatan terpilih, iaitu analisis secara deskriptif, analisis kebolehpercayaan dan analisis faktor penerokaan. Berdasarkan analisis tersebut, ianya telah mengesahkan bahawa Model *Maqāṣid Sharī'ah* merangkumi *maqāṣid-cum-maṣāliḥ* yang boleh digunakan sebagai penentu (*wasīlah*) kepada pembolehubah-pembolehubah lain dalam menentukan proses penilaian dan pembangunan produk-produk kewangan Islam oleh para ulama *Sharī'ah*. Pembolehubah-pembolehubah itu adalah merangkumi *fiqh al-mu'āmalāt*, kaedah-kaedah *fiqh* (*qawā'id al-fiqhiyyah*), *fiqh* keutamaan (*fiqh aulāwiyyāt*), metodologi undang-undang Islam (*uṣūl al-fiqh*), Objektif ekonomi Islam, Objektif kewangan Islam dan objektif undang-undang dan sosial. Oleh itu, kajian ini telah berjaya membentuk model baru bagi teori *maqāṣid* merangkap *maṣāliḥ* yang jelas sebagai garis panduan kepada ulama-ulama *Sharī'ah* untuk memberi *ijtihād* mengikut kepada kesesuaian ke arah membangunkan produk-produk kewangan Islam.

TABLE OF CONTENTS

APPROVAL PAGE.....	i
DISCLAIMER.....	ii
PERMISSION TO USE.....	iii
ABSTRACT.....	iv
ABSTRACT (BAHASA MELAYU VERSION).....	v
ACKNOWLEDGEMENT.....	vi
TABLE OF CONTENTS.....	vii
LIST OF TABLES.....	xi
LIST OF DIAGRAMS.....	xiii
ABBREVIATIONS.....	xv
CHAPTER 1.....	1
INTRODUCTION.....	1
1.1 Background of the Thesis.....	1
1.2 Issues in Islamic Financial Products.....	3
1.2.1 Debt or asset-based financing.....	4
1.2.1.1 <i>Al-Bai' Bithaman Ajil</i> (BBA) Contract.....	4
1.2.1.2 <i>Bay' al-Tawarruq</i> Contract.....	8
1.2.2 Equity-based financing.....	11
1.2.2.1 <i>Mudārabah</i> or <i>Commenda</i> Contract.....	12
1.2.2.2 <i>Mushārah</i> contract.....	17
1.2.2.3 <i>Mushārah Mutanāqisah</i> Contract.....	20
1.3 The Problem Statement.....	23
1.4 Objectives of the Thesis.....	33

1.5	Research Questions.....	35
1.6	Significance & contribution.....	35
1.7	Scope and Limitation of the Study	36
1.8	Organisation of the study	37
1.9	Conclusion.....	38
CHAPTER 2.....		39
LITERATURE REVIEW ON THE FUNDAMENTALS OF THE <i>MAQĀṢID AL-SHARĪ'AH</i>		
.....		39
2.1	Introduction	39
2.2.	The Basic Fundamentals of <i>Maqāṣid Al-Sharī'ah</i>	45
2.2.1	<i>Fiqh al-Mu'āmalāt</i> (Islamic Financial transactions).....	45
2.2.2	<i>Qawā'id al-Fiqhiyyah</i> (<i>Fiqh</i> Maxims).....	50
2.2.3	<i>Fiqh al-awlāwiyyāt</i> (the priorities of Islamic jurisprudence).....	60
2.3	The Methodology of <i>Maqāṣid</i>	63
2.3.1	<i>Uṣūl al-fiqh</i> as a Methodology of <i>Maqāṣid</i>	63
2.3.1.1	Primary Sources	65
2.3.1.2	Rational Secondary Sources.....	80
2.4	Conclusion.....	130
Chapter 3		134
LITERATURE REVIEW ON <i>MAQĀṢID-CUM-MAṢĀLIH</i>		134
3.1	Introduction	134
3.2	Maṣlahah and the <i>Maqāṣid al- Sharī'ah</i>	134
3.3	The early development of the objectives of <i>Shari'ah</i> (<i>Maqāṣid al-Sharī'ah</i>).....	138
3.3.1	The First Stage: Foundation: (Beginning from Early Islamic Era).....	139
3.3.2	The Second Stage: Establishment.....	141

3.3.3	The Third Stage: Building (known the period of Umayyad).....	147
3.3.4	The Fourth Stage: Flowering (known the period of Abbasid)	150
3.3.5	The Fifth Stage: The Proliferation	159
(i)	The Early fourth Century of the <i>Hijrah</i>	160
(ii)	The Early Fifth Century to Eight Century of the <i>Hijrah</i>	161
3.4	The Theoretical Application of the <i>maqāṣid al-Sharī'ah</i>	197
3.5	The Contemporary Application of the <i>maqāṣid al-Sharī'ah</i>	225
3.6	Conclusion.....	258
Chapter 4	.....	261
METHODOLOGY	.....	261
4.1	Introduction.....	261
4.2	Research Design.....	261
4.2.1	Library Research as Qualitative method.....	261
4.2.2	Fieldwork Research.....	263
4.3	Sampling Population.....	264
4.4	Sampling Design.....	266
4.5	Data Collection Method	266
4.6	Questionnaires Design.....	267
4.7	Statistical Analysis on Reliability and Validity of the Questionnaires Design	269
Chapter 5	.....	272
DATA ANALYSIS AND FINDINGS	.....	272
5.1	Introduction.....	272
5.2	Sample Profile (Demography)	272
5.3	The data analysis and findings on viability and applicability of <i>Maqāṣid al-Shari'ah</i> Framework (<i>MSF</i>)	276

5.3.1	Reliability Analysis for Nine Variables.....	276
5.3.2	Exploratory Factor Analysis (EFA)	277
5.3.3	Descriptive Analysis on Mean and Standard Deviation for Eight Variables	280
5.4	The data analysis and findings of four selected Islamic financial products.....	293
5.4.1	Reliability Analysis for Four Selected Islamic Financial Products	294
5.4.2	Exploratory Factor Analysis (EFA)	295
5.4.3	Descriptive Analysis on Mean and Standard Deviation for Four Selected Islamic Financial Products	298
5.5	Conclusion.....	306
Chapter 6	.....	307
SUMMARY AND CONCLUSION		307
6.1	Introduction.....	307
6.2	The Summary and Conclusion of <i>Maqāṣid al-Sharī'ah</i> Framework (MSF).....	307
6.3	The Summary and Conclusion on selected issues in Islamic Banking and Finance Products	313
6.3.1	Issues in Debt-Financing	313
6.3.1.1	The <i>Bai' Bithaman 'Ajil</i> (BBA) contract.....	314
6.3.1.2	<i>Tawarruq</i> contract.....	314
6.3.2	Issues in Equity-Financing	317
6.3.2.1	<i>Muḍārabah</i> and <i>Mushārah</i> sukuk contracts.....	317
6.3.2.2	<i>Musharakah Mutanāqisah</i> (MM) Contract.....	321
6.4	Conclusion.....	323
REFERENCES.....		341