



## Maslahah as an Islamic Source and its Application in Financial Transactions

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**ABSTRACT:-** Achieving Maslahah is one of the sharia objectives. The lack of clear evidence from Al-quran and Al-sunnah concerning financial transaction makes its role very important. This paper aims to explain the concept of Maslahah and opinion of scholars of Maslahah as one of Islamic sources and their evidences. This paper also mentions legal maxim that has strong relationship with Maslahah. It also explains some of the application of Maslahah in Financial Transaction.

The methodology of this paper is through qualitative research based on relevant literatures on Maslahah. The general finding of this paper shows that there are three categories of Maslahah in the application of financial transaction.

**Keywords:-** Maslahah, Islamic Source, Financial Transaction, Muamalah al-Maliyah

### I. INTRODUCTION

The meaning of Islam can be explained in several ways. Islam is derived from the root "sa-li-ma" which means to surrender, to submit. The other meaning is peace. Peace is acquired when the Muslim obeys Allah S.W.T. The peace can bring the happiness in this world. Also, in other side Islam has been described as a way of life in the majority Muslim now days. As mentioned in the Quran, "Those who believe and whose hearts find remembrance of Allah-indeed it is in the thought of Allah alone that the heart of man really finds rest those who believe and act righteously. Joy is them, and a bliss-full home to return to" (Al-Qur'an 12: 28-29)

As far as Islam is concerned, with the concept of deen, it provides an all-encompassing ethos for man. More specifically, the Islamic Finance vision cannot be envisaged without accepting the all-pervasive concept of deen from the Muslim Scholars, the Qur'an and the traditions of the prophet. In the terms of financial system, the relationship between finance and Islam is interesting to explore and discuss with the view of Islam, as we called by worldview of Islamic finance.

### II. WORLDVIEW OF ISLAMIC FINANCE

Worldviews reflect a society's social vision and thus defining its social norm therefore it exerts significant influence on the financial discussions. According to al- Attas (1995) an Islamic worldview is the vision of reality and truth that appears before our mind's eye, revealing what existence is all about. The worldview of Islam encompasses both al - dunya (Life) and al-akhirah (After life), in which dunya aspects must be related in a profound and inseparable way to the akhirah aspect. Such world view requires one to acquire knowledge about the concept of: Din (religion), God, Man and Universe.

In other words Islamic, worldview is a holistic view that combines reason and divine revelation. The Holy Quran says "By time, man is in loss, except those who believe and do good works and exhort one another to truth and to patience" (Al-Asr:1-3). This shows that for Muslims, Islamic worldview is a basic need without which they will be in utter loss and confusion. With Islamic worldview, Islamic banks and financial

institutions are able to pursue transactions manifesting the quranic conception of trading and commerce (al bay) as an alternative to conventional transactions which are based on conventional worldview that is only based on reasoning alone, al- Attas (1995).

The worldview of Islamic finance can be found in the sharia where the explanation about faith (aqidah), ethics (akhlak) and transaction (muamalat) between man and god and also between man and man at the forefront of Islamic finance curriculum are laid out. The objective of the Sharia (maqasid al-Sharia) is equally vital in spelling out the purpose of

God's commandment and its impact on public interest (Maslahah).

For example the component of Islamic finance amongst others constitutes the various prohibitions on riba, gharar and gambling. However, there seems to be a weak link between these prohibitions and the meaning of Islam. This is because the Islamic worldview which includes the meaning and purpose of Islam has been relatively overlooked by many of peoples. Especially in term of Maslahah, many transactions which are in the financial system did not head Maslahah factor for anything they have done.

Maslahah is one of the objectives for the creation of maqasid syari'ah, where Maslahah prioritize the needs of the public and its effects, and also cannot be separated in the attention to restrictions that are not sharia compliant. Al-Qaradawi (2007).

### **III. THE CONCEPT OF MASLAHAH (DEFINITION, CHARACTERISTIC AND CLASSIFICATION)**

Maslahah, literally means benefit or interest. When it is narrowed to Maslahah mursalah, the term indicates unregulated public interest in the sense of not having been regulated by the Lawgiver, as no textual authority can be found on its validity or otherwise. Al Ghazali defined Maslahah as the consideration which secures a benefit or prevents harm but is, in the meantime, harmonious with the aim and objective of the sharia. These objectives consist of protecting the five essential values, namely religion, life, intellect, lineage and property. According to him, any measure, which secures these values, falls within the scope of Maslahah and anything, which contravenes them in masfadah (evil) while preventing the latter is also Maslahah, Laldin (2006) Scholars have divided Maslahah into three categories:

1) Maslahah which the Quran or sunnah has expressly upheld and has enacted a law for its realisation. This is called al Maslahah mu'tabarah or accredited Maslahah. This type of Maslahah cannot be rejected and must be upheld. For instance, Islam has ordered its followers to protect their intellect and, therefore, Islam has forbidden the consumption of liquor by its followers. So, even if the consumption of liquor is accepted and common among the people, this practice is still forbidden because it is against the Maslahah that was ruled out by the Quran and Sunnah. Similarly, any other items of consumption, which can harm the intellect, is also forbidden even though it is a common practice of the people to consume it. The validity of Maslahah in this case is definite and shall not be questioned. Scholars are in agreement that promoting and protecting this and other similar values constitutes a proper ground for legislation. The fact that Allah has upheld them is equivalent to his permission and approval for all measures, including legislation, that aim at their realization.

2) The second type of Maslahah is the invalidated Maslahah, or Maslahah mulgha which the Quran or Sunnah has nullified either clearly or by indication that could be found in sharia. The scholars are agreement that legislation based on such interest is invalid and no judicial ruling may be enacted in its favor. Similarly, the practice of people that is included in this category is invalid and cannot be considered. For example, the practice of usury in transactions, even though it is common among the people, is invalid because the Maslahah in this case is clearly nullified (mulgha).

3) The third variety of Maslahah is the masalih that has been validated after the divine revelation came to an end, namely the Maslahah mursalah. For this type of Maslahah, there is no text that validates it or invalidates it. There are many legislations enacted in the past and present based on this kind of Maslahah. Among the examples from the past are the codification of al Quran carried out by the companions after the demise of the Prophet S.A.W and the rulings of imposing the death penalty for a group of people who are involved in killing a person. The contemporary utilization of Maslahah mursalah can be observed in different enactments of the law, which benefits the people and prevents them from harm such as traffic regulation that different regulation related to financial management, regulations related to family matters

and so on.

#### IV. THE VALIDITY OF MASLAHAH AS ISLAMIC SOURCE

From earlier discussion, we can understand that the scholars did not dispute Maslahah mu'tabar and Maslahah mulga as a legal reference because indirectly they are also sourced from either the Qur'an texts, as well as the Sunnah. Zuhaily (1999) stated the scholars divided into two groups related Maslahah mursalah, the first group is Syafi'i schools and Zaheri. This group does not consider Maslahah mursalah as a source of law. They argue that Islamic law should stand in a well-maintained, could not change since the time, should not be replaced because of the alternation of generations. Sharia is not sourced from the lust or specific purpose. The enactment of sharia is not because of specific considerations.

The second group, the majority of scholars is namely Hanafi, Maliki and Hanbali. They argued that Maslahah mursalah is considered as legal source. Changing Maslahah results in changes in the law. Postulates that underlie them are:

1. Life is developing continuously. Maslahah was always changing in every time. If only sharia does not adapt to Maslahah, then people will be in the mass trouble. It violates sharia objective leading to Maslahah and away from al-harj.

He has not laid upon you in religion any hardship (Al Quran, Al-Hajj, 22:78)

...رسعلا مكب دير يلاو رسيلا مكب الله دير ي...

Allah intends for you ease, and he does not want to make things difficult for you... (Al Quran, Al-Baqarh, 2:185)

2. Sharia laws aimed to provide benefit and as a mercy to the universe.

نيملا علل ةمحرلا لا انلسر امو

And we have sent you (Muhammad SAW) not but as mercy for all mankind (Al Quran, Al-Anbiya' 21:107)

3. Maslahah notch is wider than qiyas which is the result of ijthad of the companions, successors and even scholars have equal position with the ijma'. It is based on Abu Bakar efforts to collect the verses of the Qur'an in the Mushaf fighting dissidents in paying zakat, and made Umar as caliph. All these aimed to achieve Maslahah. It is also proved that Maslahah is one of legal basis, Zuhaily (1999)

With regard to the inaugural Maslahah as one of the sources of law, these schools define some conditions. The following conditions are designed to ensure that Maslahah does not become an instrument of arbitrary desire or individual bias in legislation (Laldin, 2006).

1. The Maslahah must be genuine (haqiqiyah), as opposed to imaginary Maslahah which not proper ground for legislation. There must be a sensible probability that the benefits of legislating a rule in pursuance of Maslahah, outweigh the harms that might accrue from it. An example of imaginary Maslahah, according to some scholar, is to abolish the husband right of talaq by vesting it entirely in a court of law.

2. The Maslahah must be general which means it should prevent harm or secure benefit to the people as whole and not to particular person or group of persons. This indicates that legislating a rule on the ground of Maslahah must consider the benefit to the largest possible number of people. This is because the whole concept of Maslahah is meant to secure welfare of people the people at large.

3. Finally, the Maslahah must not be in conflict with the principle or value which is upheld by the Quran, Sunnah or ijma', Laldin (2006)

#### V. Maslahah and the Principle of al-Qawaid al-Fiqhiyyah

Al-Qawaid al-Fiqhiyyah or legal maxims are general rules of fiqh which can be

applied in various cases that come under the common rulings. It means general fiqh principles which are presented in a simple format consisting of the general rules of sharia in particular field related to it, Laldin (2006)

Al-Qawaid al-fiqhiyyah has essential role in achieving Maslahah. Specially the qaidah that stated

لازي ررضلا

(ad-dhararu yuzalu)

“Harm must be eliminated”

Basically, this maxim means injurious or harmful acts must be avoided and prevented in all cases. This maxim has same purposes with the other maxim “la dharara wa la dirara”. This maxim has found in a hadiths with the exact words. The maxim is mentioned in the most legal maxim books. It is one of the normative legal maxims.

No doubt this legal maxim is one of fundamental in Sharia base and also one of Sharia Objective. To achieve maslahah, the harm must be eliminated. Sharia established Qisash to keep and safe human soul, sharia established cutting a hand to keep wealth from being stolen. It also established rajam to keep away human from zina.

This legal maxim explains the importance of eliminating harm, forbid its existence in all cost and avoid it even before it happens. The harm consists of two objects. Those are certain harm and general harm. In addition, this maxim also means that it is obligatory for everyone to always to strive to prevent before its occurrence through implementing precautionary measures. Likewise, it means that if any has occurred, then all necessary measures should be taken to remove it or to lessen its destructive implications wherever possible, As Syal, (2002). The other maxim also stated

تاروظحملا حيببت تارورضلا

(al-darurattubihu al-majzurat)

“Necessities render prohibited things permissible” It means in an emergency situation, people are allowed to undertake the actions which are prohibited for them in normal situation as far as Islamic law is concerned. As the application of this rule what has been stated in the elucidation of the majallah al ahkam al adliyyah that the valid and legal authorities do have the right to seize the property of the person, who does not want to settle the debt despite being solvent, without his consent, or to take and sell it by force in order to settle his due debt, Ismail (2013)

It is been known that the objective of sharia is to achieve Maslahah. The nature of mashalah is to preserve daruriyat. In Maslahah concept, there five elements called daruriyat alkham.

- a. Maslahah which maintains or preserves religion (hifz al-din)
- b. Maslahah which maintains or preserves life (hifz al-nafs)
- c. Maslahah which maintains or preserves intellect (hifz al-aql)
- d. Maslahah which maintains or preserves progeny(hifz al-nasl)
- e. Maslahah which maintains or preserves property (hifz al-mal)

They are the main values that are taken into account, in the process of legislation of the rulings of the Islamic law. They are extensively interlinked with the corpus of Islamic law and cannot be ignored at any cost. No doubt, the role of al-qawaidhal-fiqhiyyah is very important especially when the clear evidence from text is lack, Ghani (2011)

## **V. Application of Maslahah in Financial Transactions**

Maslahah in the context of the investment made by a person is who should be beneficial for the parties in the transaction and should be perceived by the public.

Maslahah principle is the most important thing in muamalah. Therefore, in the investments we need to ensure that the investment made by investor can deliver social impact and a positive environment for people's lives, both for today's generation and for generations to come. The whole investment that allows a temporary profit, but in the end will cause harm to all parties ought to be abandoned. Such investments are considered by God as a destructive investment and not bring serious benefits Muslims in particular and society in general. The same thing is accursed investment practices that on the surface seemed to produce the benefit of people, but actually at the same time destroying the interests of society as a whole. All types of investment will end up with a loss in business.

The whole investment that not brings the benefit for the people should be abandoned, because it is not sharia

compliant. Moreover, retaining profit of investment such hoarding, store it so that the wealth become unproductive is an act which is prohibited by Sharia and should be abandoned. In other words, Islamic law strongly encourages the real sector, to the benefit of the ummah.

In addition, in order to get the blessing treasure in the investment, Islam also noticed other thing which is a form of cruelty in life such as *riba*, *gharar*, and *maysir*.

Maslahah itself can be realized if a transaction or investment regardless of eating another man's treasure and avoid the cruelty, Mardani (2013)

According to Yusuf Al-Qaradawi (2001), picking the usury is equal with charging or taking someone else's property without giving the person a replacement in any form. In other words a lender gets something without giving anything to the loan recipient. Dependence on usury makes a person lazy to work to earn money. And the money lent by usury will not be used for working capital or trade, so do not bring benefits to the community. Permitting usury will deter people to do well. If usury is forbidden, people will give the loan with good intentions. They will not expect results or returns greater than what they lend, so it will encourage nature to help each other in the social economy and will bring the benefits to society in general. Collecting the usury will lead to the exploitation of the rich against the poor which would worsen the state of society and poverty. Ghofur (2008)

The prohibition of usury in Islam is to achieve justice between the owners of capital and labor, and dare to risk with full responsibility. That's justice in Islam. Islam is not biased in any way, including in the economy, so that the prohibition of usury would lead the great Maslahah for the ummah. Al-Qaradawi (2001)

If the period leasing an agriculture land ends before harvesting the corps, the land should remain in the hand of the leaseholder with the payment proportionate rent until the harvesting is completed. This allowed in Islamic law, so as to avoid harm to the leaseholder for cutting the corps before its appropriate time. Ismail (2013)

If anyone sells anything that could rot quickly, such as fruits, and the buyer disappears before the payment of the price and before receiving the sold items, the seller this case is allowed to revoke the sale contract and sell the said item to another person if he fears that the sold items will be spoiled. This is to prevent loss to the seller which would harm is business. Laldin (2006) During the early days of *takaful*, the pioneering *takaful* companies obtain *retakaful* support from conventional reinsurers. Where possible the terms and conditions of conventional reinsurance treaties were modified to comply with sharia. An analysis of these early *retakaful* agreements shows that in reality, they were still risk transfer mechanisms. However, at that time the *takaful* companies needed to cede out to these reinsurers as there were no *retakaful* companies would be in a precarious position in terms of risk management.

Similarly, the early Islamic banks and *takaful* companies is the facilities of conventional bank such as auto debit transfer, conventional credit cards, accounts in conventional bank and third party banks. Islamic bank at that time also allowed their financing to be covered by conventional insurance companies as there were no *takaful* companies then. In the area of *takaful*, companies are required to reserve very prudently and this will affect the surplus due to prevailing participants. However, this is allowed as it was required by law to protect the long term sustainability of the operators.

Nowadays, there still many countries where Islamic banking and finance are not available. As such Muslims are permitted to deposit their money in conventional banks and use the facilities of these banks as long as they not breach the principles of Sharia.

Sometimes, the use of these conventional facilities is obligatory, such as the purchase of conventional motor insurance to enable motor vehicles to be used in public roads. Similarly some countries require that students studying in their countries purchase health insurance, otherwise they will not be allowed into these countries. Even mosques in some countries may be required to purchase conventional insurance and obey certain laws which may not comply with the sharia. Ismail& Rahman (2013)

## VI. CONCLUSION

There are three kinds of Maslahah. Which the Quran or sunnah has expressly upheld and has enacted a law for its realization is called *al Maslahah al mutabarah*. Maslahah which is eliminated is *Maslahah mulga*, and the third variety of Maslahah is the *masalih* that has been validated after the divine revelation came to an end, namely the *Maslahah mursalah*.

The validation of Maslahah mursalah does not meet the agreement among scholars. They are divided into two groups, the group who allows it and the group who forbids it. They have own evidence to strengthen their opinion. The former group established some conditions to validate Maslahah mursalah as Islamic source.

Interest bank based and conventional insurance are clearly prohibited due the existence of riba and gharar in the transaction. In some cases, the needy of both very high especially when they become obligatory in daily life and there is no sharia based as an alternative. It can be concluded that the case considered as darurah. As known, the nature of Maslahah is to preserve darurah.

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