



## THE URGENCY OF MAQASHID SHARIA IN THE DEVELOPMENT OF SHARIA BANKING PRODUCTS

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### Abstrak

*Pergerakan dan pertumbuhan perbankan syariah di Indonesia semakin tahun semakin meningkat, banyak diminati oleh nasabah muslim maupun non muslim. Hal ini mendorong perbankan syariah dalam mengembangkan produk-produknya agar mampu bersaing dengan bank konvensional. Namun hal tersebut tentunya harus diimbangi dengan ilmu maqashid syariah dan ushul fiqh dalam pengembangan produk perbankan supaya tidak terjadi kekakuan, ruang gerak yang sempit bahkan kelalain serta kesalahan dalam pemeriksaan dan pengauditan. Dalam tulisan ini menggunakan metode penelitian kepustakaan (library research) dengan pendekatan kualitatif. Urgensi maqashid dalam produk perbankan syariah mengatur semua fatwa, regulasi, produk-produk keuangan dan perbankan serta kebijakan fiskal dan moneter agar tidak kehilangan substansi syariahnya. Maqashid syariah menjadi faktor penentu dalam menciptakan produk-produk ekonomi syariah yang dapat berperan ganda (alat pengandali sosial dan rekayasa sosio ekonomi) untuk mewujudkan kemaslahatan umat muslim.*

**Kata kunci:** Perbankan Syariah; Maqashid Syariah; Produk Perbankan.

### Abstract

*The movement and growth of Islamic banking in Indonesia is increasing every year and is in demand by Muslim and non-Muslim customers. This has encouraged Islamic banking to develop its products so that they can compete with conventional banks. However, of course, this must be balanced with knowledge of Islamic maqashid and ushul fiqh in the development of banking products which are sometimes ignored by Islamic financial institutions. As a result, there is rigidity, narrow space for movement and even negligence and errors in inspection and auditing. In this paper using library research methods (library research) with a qualitative approach. The urgency of maqashid in Islamic banking products regulates all fatwas, regulations, financial and banking products as well as fiscal and monetary policies so as not to lose their shari'ah substance. Maqashid syari'ah is a determining factor in creating sharia economic products that can play a dual role (social control tools and socio-economic engineering) to realize the benefit of Muslims.*

**Keywords:** Sharia Banking; Maqashid Syariah; Banking Products.

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## INTRODUCTION

In Islam, there are two sources of law that become a guideline for adherents throughout the world, namely the al-Quran and hadith. (Aljuraimy & Halil Thahir,

2019, p. 1). Both of them are the guideline of life for Muslims in managing all aspects of life, both ritual aspects of worship and aspects of economic life. But sometimes problems arise where there are no legal provisions on both of them so that a way of establishing the law appears in Islam. The Al-Qur'an and Assunah are the guidelines in which the Shari'a are contained in them using Arabic which is full of meaning. (Komarudin and Hidayat, 2019)

Advances in technology have also contributed to encouraging the movement of Islamic banking so that it is not eroded by the modernization of the global economy which has begun to enter every line of human economic life in the current era. (Nugraha et al., 2020, p. 2). This gave rise to modern contemplation of Islam with all its elements including *ushul fiqh* and *qawa'id al-fiqiyah* which have become our foundation so far in practicing sharia banking in Indonesia. We need to know that modern banking practices are more complicated and complex and this is certainly a challenge for Islamic banks. (Bin Ishak et al., 2021) So that the practices contained in shari'ah banking products do not create elements of gharar or usury.

Supervisors of shari'ah banks from the Financial Services Authority (OJK) in all regions must have competent and standardized shari'ah knowledge, meaning maqashid sharia knowledge and *ushul fiqh* in banking, which are sometimes neglected by these institutions nowadays. (Toha & Manaku, 2020) Theoretically, Islamic Financial Institutions (IFIs) should have a better picture of understanding the concept of maqasid al-shari'ah whose application should not be similar to the principle of "the end justifies the conventional means". On the contrary, these principles must be applied as a practical solution to ensure that every Islamic rule can be implemented gradually, thereby harmonizing the Shari'a with reality.

The negative impact of ignoring this main point is causing rigidity, narrow space for movement and even negligence and errors in inspection and auditing. In practice in the field there are many complaints and complaints from people who are competent in Islamic banking, the rigidity and severity carried out by members of bank supervisors from official government institutions, especially supervision in areas covering the territory of the Republic of Indonesia.

Sharia banking is one aspect of financial institutions in Indonesia that is growing rapidly. (M. Anwar et al. 2020) As a financial institution, Islamic banking is a form of business that is supported and supported by the trust of the Muslim community in Indonesia. (Komarudin and Hidayatullah, 2021) Islamic banking will continue to develop not only in our country but even in the Americas and Europe in the coming years. (Nurnazli, 2014) This means that the role of Islamic banking in economic growth is very important in the present, even Indonesia ranks fourth in terms of sharia financial circulation after Iran, Malaysia and Saudia Arabia.

Therefore product development in Islamic banking institutions requires caution in seeking illat and maslahah as well as strict discipline related to Islamic financial institutions to minimize harm according to maqashid syari'ah. Regulations,

fatwas and financial products as well as Islamic banking that are formulated will be rigid and static and will find it difficult to develop without maqasid shari'ah where this will lead to difficulty competing with conventional banking institutions.

This study aims to find the urgency of maqashid shari'ah as an element in determining laws that are not stipulated in the Qur'an or hadith in formulating, stipulating, solving and adopting policies on every problem that arises in the development of shari'ah banking products in Indonesia. In other words, some contracts require modification in order to be in line and accepted according to the times. One of them is by providing a third party guarantor for mudharabah (partnership) and musyaarah, where the original practice was designed without a guarantor.

Several previous studies stated that it is necessary to develop sharia banking products that are mandatory and purely comply with sharia so that they have competitiveness with conventional banks such as Fahrur Ulum's research in 2014.(Ulum, 2014) In line with Fahrur's research, Yosi Aryanti in his 2017 research stated that in its development so that it can compete with conventional banks, Islamic banking must focus more on the use of technology and supporting media by reformulating muamalah fiqh in accordance with current developments. (Aryanti, 2017) Of course, the development of sharia banking products must be in line with Islamic law and cannot be ruled out, so the MUI's role must also be active in giving fatwas, according to Hardi and Erja Armas' research in 2019.(Hardi, 2019)

## **METHODS**

This research is a library research with a descriptive analysis method. Researchers analyzed the data in detail and depth by presenting the data obtained into a comprehensive analysis in the form of facts that can be accounted for. The sources of data used are materials from the literature with books as the main source, then from journal articles, supporting media related to research discussions. This research also uses a normative juridical approach, namely a research approach that is carried out in order to reveal the position of sources of law that are able to provide guidance and become a rule of law for readers and legal subjects.(Bachtiar, 2018) The legal sources of this research are primary data, namely the DSN MUI Fatwas and other legal sources.

## **RESULTS AND DISCUSSION**

### **Maqasid Sharia Theory**

Maqashid syari'ah according to Al-Khadimi consists of two words, maqashid and syari'ah. The word maqashid is the plural form of maqshad which means intent and purpose (Febriadi, 2017, p. 3). It is mashdar mimi which is taken from the verb qashada, yaqshidu, qashdan. In language, maqshad has several meanings: first,

support, direction (explanation), and *istiqamah* in walking the path. Second, mid, neither excessive nor lacking.

As for *shari'ah* is an Arabic vocabulary which literally means "the path to the water source" or "the source of life". (Ibn Ya'qūb al-Fairūzābādiy, 1995) *Sharia* is the source of water and it is the destination for people who will drink. (bin Abi Bakr bin Abd al-Qadir Ar-Raziy, n.d.,) *Sharia* also means a decree from Allah SWT to His servants in the form of a religion that has been prescribed to them.

*Maqasid* theory certainly cannot be separated from the discussion of problems. This is because basically in terms of substance, the form of *al-maqāshid asy-syarī'ah* is benefit. (Jaya Bakri, 1996)

The study of *maqashid syari'ah* theory in Islamic law and Islamic economics is very important, based on the following considerations:

1. Islamic law is law that originates from the creator (Allah SWT) and is intended for mankind. (Sa'diyah, 2020) Therefore, the law will always be faced with social change. In such a position, can Islamic law, whose main source (the Al-Qur'an and Sunnah) come down several centuries ago, be able to adapt to social change?
2. From its history the study of *maqashid sharia* has been carried out by Rasulullah SAW, his companions, *tabi'in* and the generation of *mujtahid* afterward.
3. Knowledge of *maqasid shari'ah* is the key to the success of a *mujtahid* in his *ijtihad*, because it is on the basis of legal objectives that every problem in *mujtahid* among human beings can be returned (A. A. W., 1996).

### **The Urgency of Maqashid in the Development of Islamic Banking Products**

Along with the times and advances in technology, it is undeniable that there are new practices in Islamic financial institutions, one of which is Islamic banking. (Nasuka, 2017) This gave rise to contemporary Islamic thought which forced the old laws to undergo metamorphosis following the realities of the times. In this regard, *maqashid syari'ah* is a relevant space as a basis and place for the development of systems, practices, and even *sharia* banking products in the current multidimensional era.

Through the fatwa of the MUI National *Sharia* Council on *shari'ah* banking products as stipulated in Law no. 10 of 1998 concerning amendments to Law no. 7 of 1992 concerning profit-sharing banks and decrees of Bank Indonesia Directors of Bank Indonesia, 12 May 1999, No. 32/33/KEP/DIR concerning Commercial Banks, 32/34/KEP/DIR concerning Commercial Banks Based on *Sharia* Principles, 32/35/KEP/DIR concerning Rural Banks, 32/36/KEP/DIR concerning Rural Banks Based on Principles *Sharia*. Is the elaboration of the concept of Islamic *sharia*. (Kurniawan and Hudafi, 2021)

An overview of products in *shari'ah* banking can be seen in the *Mudharabah* and *Musyaarah* contract guarantees. The DSN fatwa underlines that the investment contracts included in the trust contracts cannot guarantee profit to the parties. In

the DSN MUI fatwa No. 08/DSN-MUI/IV/2000 explained: "Mudharabah is a cooperation agreement in a business between two parties in which the first party (owner of capital, the Syari'ah Financial Institution) provides the capital as a whole, while the second party acts as manager, fund business profits are shared between them according to the agreement set forth in the contract agreement. Meanwhile Musyarakah is financing based on a cooperation agreement between two or more parties for a particular collaboration, in which each party provides a certain amount of funds with the condition that the profits and risks of losses will be borne together according to the agreement.

Actually, in the principle of mudharabah financing there is no guarantee term, but so that the mudharib does not default, the Islamic Financial Institution can request a guarantee from the mudharib or a third party. Guarantees can only be sanctioned if the mudharib is proven to have defaulted on points that have been mutually agreed upon. For this reason, in essence, in musyarakah financing there is no such thing as a guarantee, but to avoid violations or defaults, Islamic Financial Institutions can request a guarantee. (Lestari, 2019, p. 6) One of the most basic values in building a cooperative business theory in Islam is 'Adl (Justice), this must be implemented in every contract, including in a mudharabah contract. (Syantoso, Komarudin, and Setya Budi, 2018)

In the DSN fatwa No. 92/DSN/MUI/IV/2014 concerning financing accompanied by rahn (al-Tamwil al-Mautsuq bi alRahn): "In principle, a rahn contract is permitted only for accounts payable which among others arise due to qardh (borrowing) contracts, sale and purchase those that are cashless, or leasing contracts (ijarah) where payment for ujah is non-cash; In principle, in a trust contract, there is no guarantee (marhun). (Nst and Nurhayati, 2022) However, so that the trustee does not default, in this case, the LKS may submit collateral requirements (marhum) from the trustee (al-amin, including sharik, mudharib, and musta'jir) or from a third party.

Related provisions that become Murtahin's income: "In the event that rahn (dain/marhun bih) occurs due to a sale and purchase contract for which payment is made on credit or not in cash, murtahin's income will only come from the profit (alribh) of the sale and purchase; "In the case of rahn occurring because the leasing contract (ijarah) where ujah is paid by credit, murtahin's income only comes from ujah; In the case of rahn (dain/marhun bih) occurring due to a loan of money (qardh contract), murtahin's income only comes from mu'nah (maintenance services) for marhun, the amount of which must be determined and agreed upon at the time of the contract as ujah in an ijarah contract. In the event that rahn is carried out at the time of the contract of trust, murtahin's income will only come from the profits that are shared over the business carried out by the holder of the trust. (Toha and Manaku, 2020)

The provisions that have been written above are in accordance with maqashid in which trustworthy contracts are prescribed, that is, there are benefits that come with risks (*al-ghunmu bi al-ghurmi*). When profits are guaranteed, the main characteristics of the contract above are lost and do not change in the sense here is the same as interest-bearing loans in conventional financial or banking institutions. Maqasid shari'ah is an important core in the teachings of *ushul fiqh*, because of that maqasid shari'ah occupies a very important position in formulating shari'ah economics. Not only is it needed to formulate policies in the economy, but Maqashid syari'ah is also needed to create banking products and Islamic financial institutions as well as various other microeconomic theories. Maqashid sharia is of course very much needed in terms of making banking regulations and also sharia financial institutions.

Without maqashid syari'ah, all fatwas, regulations, financial and banking products as well as fiscal and monetary policies, they will lose the substance of their syari'ah. Without the maqashid syari'ah approach, the *muamalah fiqh* that is developed and the banking and financial regulations that are to be formulated will become rigid and static. As a result, Islamic banking and financial institutions will be difficult and underdeveloped and this can cause Islamic banking and financial institutions to be unable to compete with conventional financial and banking institutions.

Maqashid shari'ah is the most decisive factor in creating sharia economic products that can play a dual role (social control tools and socio-economic engineering) to realize the benefit of Muslims, but more than that, maqashid shari'ah can provide a broad philosophical space make sense of sharia economic products created in *ijtihad* activities on contemporary sharia economics. Maqashid syari'ah will provide a reasonable and substantial way of thinking in viewing contracts and sharia banking products. If you only rely on *fiqh* thinking, it will give birth to formal and textual thinking patterns. (Febrilyantri, 2021)

With the application of the maqashid syari'ah approach to sharia banking products, it is hoped that there will be five virtues that can be taken advantage of by Muslims, including:

1. The religion of the customers is maintained because every banking product that is born refers to the Al-Qur'an and hadith and with the existence of the Sharia Supervisory Board and the National Syari'ah Council the validity of these sharia banking products in terms of Islamic values and rules can be guaranteed..
2. The souls of customers are maintained because of the realization of the contract that is applied in every transaction to guide people to respect each other and maintain the trust given.
3. The minds of customers and bank parties are protected from the realization of demands that the bank must always disclose details about its products and is prohibited from hiding anything at all.

4. Protected the assets of customers because it is clearly manifested in every product issued by the bank where the bank seeks to maintain and allocate properly and lawfully and is allowed to take profits fairly. It can also be seen by the existence of a zakat system that aims together to clean up customer assets in a transparent manner.
5. Maintaining the continuity of the customers, this can be realized because the customer's funds are guaranteed to be halal, which will have a good impact on their families and descendants who are supported through these sharia bank products.

Only through the maqashid syari'ah approach, sharia banking and financial products can grow rapidly and keep pace with business progress that continues to change rapidly in today's digital era. In line with the increasingly rapid progress of Islamic financial institutions and Islamic banking, this deficiency must be minimized slowly and gradually.(Wasiaturrahma, 2022) This change is a reality that is happening now that the activities related to transactions are increasingly diverse. Mindsets and social practices that are manual eventually become up-to-date because they have to be confronted with the mindsets and practices of muamalah which tend to be contemporary.(Mansyur, 2020)

In the end, it is hoped that with the implementation of maqasid syari'ah in the system of products and sharia banking services to customers, it is hoped that they will be able to provide benefits, namely, among other things, that their religion, soul, wealth, offspring and mind will be maintained.

## **CONCLUSIONS AND RECOMMENDATIONS**

Maqasid Syariah is implemented to reconcile the laws in fiqh muamalat and the banking environment, so that these decisions can be adopted pragmatically without sacrificing sharia principles. The role of maqashid syari'ah in shari'ah banking products is very important and is the main point in determining a system and developing bank products because in today's society, banks must be able to provide banking products that suit the needs of the community but must also remain hold fast to the laws and decrees of Allah SWT and the Prophet Muhammad SAW.

Suggestions for practitioners are that they have to study more about the concept of maqasid shari'ah, especially for practitioners who are engaged in the world of shari'ah banking because the output of studying and studying this will be a guide in giving birth to a product before it is marketed to the public. Don't let these shari'ah banking products bring harm to both parties, especially if they are only intended to pursue profit and set aside shari'a and the norms that apply in Islamic teachings. It is hoped that with the implementation of maqashid syari'ah in the development of every sharia banking product it can provide benefits both in the world and in the hereafter for all Muslims in the world without being eroded by the times which are getting more complex every day.

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