



INTERNATIONAL JOURNAL OF ISLAMIC BUSINESS

<http://e-journal.uum.edu.my/index.php/ijib>

How to cite this article:

Zameri, S. N. M., Alwi, S. F. S., Hatta, M. F. M., Fikri, A. A. H. S. (2024). Maslahah and Its Application in Islamic Finance. *International Journal of Islamic Business*, 9(1), 82-94. <https://doi.org/10.32890/ijib2024.9.1.5>

MASLAHAH AND ITS APPLICATION IN ISLAMIC FINANCE

**Sarah Nursaadah Mohd Zameri^{a*}; Sharifah Faigah Syed Alwi^b; Mohammad Firdaus Mohammad Hatta^c;
Aula Ahmad Hafidh Saiful Fikri^d**

^a*Faculty of Business and Management, Universiti Teknologi MARA.*

^{b,c}*Arshad Ayub Graduate Business School, Universiti Teknologi MARA.*

^d*Faculty of Economics, Universitas Negeri Yogyakarta, Yogyakarta, Indonesia.*

**Corresponding author: sarah.zameri@gmail.com*

Received: 7 May 2024

Revised: 20 May 2024

Accepted: 27 June 2024

Published: 30 June 2024

ABSTRACT

In light of the complexity of contemporary Islamic banking and finance difficulties and the fact that certain answers cannot be found in traditional legal texts, *maslahah* or the public interest has emerged as a secondary source of Shariah to address these difficulties and issues. *Maslahah* which embodies the notion of achieving the public interest and preventing harm, has been crucial to the development and evolution of products and services in Islamic finance. The purpose of this study is to analyze the concept of *maslahah* as the secondary source of Shariah whereby the definition, classification, validity of *maslahah* and the conditions of validity are discussed. The study also highlighted its applications in Islamic finance products and services besides conducting library research analysis on literature from both classical and contemporary *maslahah* literature as well as the current application of *maslahah* in Islamic finance products and services. The study explained *maslahah mu'tabarah*, *maslahah mulgha*, and *maslahah mursalah* as the three classifications of *maslahah* which are considered valid when they are genuine (*haqiqiyyah*), general (*kulliyah*) and not in conflict with clear Quranic verse according to the Muslim jurists. The study also found that the concept of *maslahah* is applied in the establishment of Islamic banking and finance institutions as

well as the Islamic capital market whereby policies were developed by the government for the Islamic banking institutions to ensure the products are Shariah-compliant. Additional collateral is required, based on the principles of *usul fiqh*, for the renewal of *mudarabah* transactions. On the other hand, *ta'widh* and *gharamah* are introduced by Islamic banks to safeguard the interests of both banks and the customers. Finally, zakat financing can help entrepreneurs repay their existing financial obligations.

Keywords: *Maslahah*; Islamic finance; public interest; application.

INTRODUCTION

The Quran and the Sunnah of the Prophet Muhammad (peace be upon him (pbuh)) are regarded by Islamic scholars as the primary sources of Islamic law. Islam is more than merely a system of laws and decrees; the Quran and Sunnah provide several morality-related teachings. Besides these two major sources, there are also secondary sources which are the reinterpretation of the primary sources such as *maslahah mursalah* (public interest), apart from *istihsan* (equity in Islamic law), *ijma* (consensus of the Muslim jurists), and *qiyas* (analogical reasoning) (Islam, 2024). If the matter is not found in the above sources, we then need to look at the less referred sources of Shariah such as *'urf* (custom) and others (Ishak, 2019a). Taking the *maslahah* or public interest into account is one of Shariah's potential foundations for meeting the demands of the Muslim community as a whole. Maintaining human interest in this world and the hereafter is the spirit of Islamic law. Islamic law thus becomes the law that always reflects the state of humanity. Not only does *maslahah* in this world make it easy for humans to live but *maslahah* also guarantees human safety in the hereafter. Therefore, Islamic law seeks to bring *maslahah* to all aspects of human life (Rosyadi et al., 2024; Tahir, 2020). Thus, this study aims to analyze the concept of *maslahah* as the secondary source of Shariah. At the same time, this study intends to highlight the application of *maslahah* in Islamic finance.

LITERATURE REVIEW

It is well known that *maslahah* is one of the secondary sources of Shariah frequently acknowledged by academics when decisions and fatwas are issued. It is one of the most important resources for addressing problems and subjects for which the Quran or Sunnah provide no clear guidance. *Maslahah* has been recognized by the Shariah as a source of law for mankind to consider societal demands and changes as well as natural development. However, *maslahah* should be addressed in *ijtihad* (juristic interpretation) by the Muslim jurists concerning the Shariah standards and parameters to ensure that the exercise of *ijtihad* does not contradict the norms and principles of the Shariah (Al-Mubarak & Osmani, 2010; Laldin, 2010; Zakiah & Amsari, 2023). Although it is recognized as a source of Islamic law, continuous research on *maslahah* is required due to each period has its own *masalih* (plural of *maslahah*), which may result in differences as time evolves. Muslims believe that Shariah is an essential tool in achieving the *maslahah* of Muslim society through recognition of matters that are advantageous or harmful.

Over the last thirty years, the Islamic finance industry has experienced significant growth in both its capital amount and organizational structure. Nowadays, apart from operating in countries across the world, Islamic banks have also established themselves as a part of major banks in Western capitalist societies, operating in accordance with Islamic principles. It is not only about religious preferences but Islamic finance also has the hidden power to play an important role in encouraging an entrepreneurial culture, strengthening individuals and communities, as well as investing in a real and sustainable economy which will benefit the

wider community and the economy. As preserving the public interest is the ultimate goal of issuing fatwas and rulings based on *maslahah*, establishing Shariah regulations based on *maslahah* can promote justice and fairness. Therefore, *ijtihad* based on *maslahah* is crucial in the Islamic finance industry to provide guidelines, norms, rules, and policies for the ummah's benefit (Ishak, 2019a).

Many resolutions established by Islamic scholar authorities are based on the *maslahah*. The Shariah Advisory Council (SAC) of Bank Negara Malaysia, in its 95th meeting allowed compensation (*taawidh*) to be imposed on late payment of financial obligations and the rate shall be determined by the authority, mainly, Bank Negara Malaysia.

RESEARCH METHODOLOGY

Research methodology on *maslahah* and its application in Islamic finance follows the library research approach which involves the searching and analysis of related literature. The study begins with gathering and analyzing classical and contemporary writings related to Islamic scholars' thoughts on *maslahah* and its application in the context of Islamic finance. In obtaining the first objective of this study regarding the concept of *maslahah*, the study extracted the definition, classifications, and validity according to Muslim jurists, as well as the condition for validity from the articles. The study is then enriched with concrete examples of the application of the *maslahah* concept in fatwas, legal decisions, or the practice of Islamic finance to understand how the concept is applied in real life and the impact it brings on the lives of Muslim communities, especially in the Islamic finance products and services perspectives. Through an understanding of the concept of *maslahah*, this study explores the impact of *maslahah* on the advancement of Islamic finance based on classical and contemporary literature. This library research methodology provides an understanding of *maslahah* and its applications in the advancement of Islamic finance to provide deep insight into *maslahah* in Islamic finance.

THE CONCEPT OF MASLAHAH

Being exercised since the time of the Prophet (pbuh) along with by his companions and the earlier generations, *maslahah* was also practised by the first four successors of the Prophet (pbuh). This can be seen in the practices of compiling the Quran as a single book, selling any lost camel, banning interfaith marriage, declaring divorces uttered three times at once to be counted as final, and imposing a fine on craftsmen for the loss or damage to customers' property (Ishak, 2019a). *Maslahah* is the study of the aims and objectives of Islamic law and is often used by the Ulama in answering the legal problems that come into question. There will be circumstances, where certain issues were not mentioned in any texts from the primary sources of the Shariah law; thus, to solve these issues, so that all acts of The Horn of Muslims can be placed in the religious legal order, *maslahah mursalah* can be used as an alternative which is a basis in being *ijtihad* (Remiswal et al., 2021)

Definitions

One of the definitions of *maslahah* is the attribute of an act that realizes benefits and an act which always or usually benefits both the public and individuals (Ashur & El-Mesawi, 2006; Rosyadi et al., 2024). In

Arabic, it is defined as goodness and benefit or interest. *Maslahah* in Arabic is to do something good, beneficial, or to repair something. Meanwhile, according to colloquial Arabic, things that contain *maslahah* refer to things that are filled with goodness (Al-Azhari, 2001). Apart from that, *maslahah* also has another definition, which is an action of public interest. According to Meirison (2017), *maslahah* comes from the word *shalahah*, with the addition of 'Alif' at the beginning of the word that gives the meaning of 'good'. This leads to the definition of *maslahah* as a benefit or benefit of the damage (Anjani & Sunardi, 2024; Asiah, 2022; Meirison, 2017; Sari, 2024).

From the terminology aspect, Muslim jurists defined *maslahah* according to an approach of their choice. According to al-Ghazali (1993), *maslahah* is the preservation of the aims of Shariah. The aim of Shariah, according to him, is to defend religion, life, intellect, lineage, and properties. Thus, al-Ghazali stated that all things that can protect and preserve these five things are called *maslahah*. Similarly, Al Bugha (1999) defined *maslahah* as benefit and interest, which the Shariah attempts to achieve for humans by way of safeguarding the five basic values. The International Islamic Fiqh Academy defined *maslahah* in its Resolution No. 141 (7/15) precisely the same as what has been given by Imam al-Ghazali.

Classifications of *Maslahah*

Maslahah can be classified into three categories (Al-Ghazali, 1993; Alias, 2021b; Eldersevi & Haron, 2020; Qaed et al., 2014; Tahir, 2020). *Maslahah mu'tabarah* or accredited *maslahah* is the *maslahah* in which the Quran or Sunnah has specifically mentioned and has enacted a law for its implementation such as defending the right of ownership by penalizing theft. *Maslahah* in this category is based on reference to specific legal text or evidence in the Quran and Sunnah (Al-Lakhma, 1987) such as the compulsory prayers, fasting during Ramadan, *zakat* and the Hajj pilgrimage. This type of *maslahah* cannot be argued and must be accepted. The second category is *maslahah mulghah*, which has been nullified either explicitly or by indications in Shariah. This type of *maslahah* is prohibited by Islamic legal text because of its dangerous nature, although some people may see these things as having good in them (Al-Lakhma, 1987). Some examples of this type of *maslahah mulghah* are committing suicide or usury and consuming alcohol which are forbidden by the Islamic law to protect mankind from its dangers. Another example is liquor consumption, which is common as a part of certain people's lives. However, it is not allowed by the Quran and hadith; thus, Muslims are forbidden to consume it. The third category is *maslahah mursalah*, which does not have a specific Islamic legal text that either acknowledges or rejects them. This type of *maslahah* has certain benefits that have become necessities for mankind, but there is no specific legal text or evidence to recognize or reject them (Al-Ghazali, 1993). It is a concept in Islamic law that is accepted by Muslim jurists but does not have any Shariah arguments with specific indications. It refers to the public interest or benefit that is considered important. Therefore, *maslahah mursalah* can be used as a legal basis in Islamic legal decisions even if there is no specific text from the Quran and Sunnah consented to it (Zakiah & Amsari, 2023). The practice of enacting laws through this kind of *maslahah* can be seen in the coding of the Quran carried out by the companions after the demise of the Prophet Muhammad (pbuh).

As the sources of *maslahah mutabarah* and *maslahah mulghah* came from the Quranic texts and the Sunnah, there is no argument from Muslim jurists to be used as a legal reference because indirectly they do. The earlier Muslim jurists accepted the concept of *maslahah daruriyyah* (essentials), *hajiyyah* (needs or complimentary) and *tahsiniah* (luxuries or embellishments) (Laldin, 2010; Sari, 2024) and recognised the categories of *maslahah mutabarah* and *maslahah mulghah*. The *daruriyyah* originated from human survival whereas the *hajiyyah* stemmed from hardship in human life. However, *maslahah mursalah* is still argued among Muslim jurists and the position of *maslahah mursalah* as a method of determining Islamic legal ruling has become a lengthy polemic among the classical ulama. *Maslahah* has been upheld by the

majority of the *ulama*. *Maslahah mursalah* is synonymous with *istislah* which is also called *maslahah mutlaqah*. They maintained that *istislah* is a proper ground for legislation. When the *maslahah* is identified and the *mujtahid* does not find the *nass*, they may take any action to secure it. It is clear to say that Allah almighty revealed the Shariah for human welfare and to prevent corruption in the earth.

Validity of *Maslahah* According to Muslim Jurists

Muslim jurists agree that *maslahah mursalah* is not a legal basis in the field of worship, as the field of worship must be according to what had been inherited from the Prophet Muhammad (pbuh) (Zakiah & Amsari, 2023). However, there are different opinions among other *fiqh* scholars when it comes to the application of *maslahah mursalah* in other fields besides the field of worship.

Most of the Muslim jurists from the Hanafi, Maliki and Hanbali schools of law accepted *maslahah mursalah* as a method of determining Islamic legal ruling in *fiqh* literature and in issuing fatwa (Qaed et al., 2014). Their arguments are based on two main justifications. The first is the scholars concluded that, based on the instructions in both the Qur'an and also the Sunnah, Islamic Shariah aims to bring benefit and needs to mankind. These needs evolve, making it impossible for them to be detailed in the Qur'an as well as in the Hadith. Thus, scholars agreed that, as long as it does not bring conflicts with the Qur'an as well as hadith, *maslahah mursalah* poses valid evidence. The second justification, as mentioned by Qaed et al. (2014) in their article, refers to the companion in *ijtihad* which considered *maslahah mursalah* as a legal basis without any dispute. This is shown by the example of Umar bin Khattab when he seized some of the assets of officials gained through the exploitation of their positions. This was never practised by the Prophet Muhammad (pbuh) but was necessary for Umar to safeguard the state assets from the misbehaviour of his officials. Thus, this became the foundation which serves *maslahah mursalah* to determine the Islamic law.

Contrarily, the first among the Shafie scholars, the Hanafi scholars and some of the Maliki scholars such as Ibnu Hajib and the *zahir* experts, are of the opinion that *maslahah mursalah* cannot be used as evidence (Tahir, 2020; Zakiah & Amsari, 2023). The Shafie scholars excluded *maslahah mursalah* as legal proof. Shafie insisted that every law must come from the Quran, Sunnah, *ijma'* and *qiyas*. The only *ijtihad* method that can be used is *qiyas*. This is on the basis that Islamic law is complete and the Quran is a *tibyan* (explanation) for everything; thus, Shafie rejected any possibilities of problems that cannot be settled and solved from the texts, either directly or through *ijtihad*, namely *qiyas*. The Muslim jurists from the Shafie's School of Law denied *maslahah mursalah* as a method of determining Islamic legal ruling (Alias, 2021a, 2021b; Qaed et al., 2014). They argued that Islamic law could not change in time and should not be replaced despite the evolution through generations. According to them, Shariah is not sourced from lust or specific purposes. The enactment of Islamic law is not based on specific considerations. Al-Ghazali (1993), a Shafie jurist, did not view *maslahah mursalah* as an independent proposition, apart from the Quran, Sunnah and *ijma'*. Al-Ghazali viewed the problem of *mursalah* only as a method of *istinbath* (inquiry), not as an argument or source of Islamic law. Thus, al-Ghazali limited the scope of *maslahah mursalah* to only in *muamalat* (Alias, 2021a).

If *maslahah* contradicts the verse, then the *jumhur* (majority) of Muslim jurists (except al-Thufi) agree to prioritize the passage. However, if a conflict occurs, various opinions will emerge as follows. According to Ath-Thufi, "*maslahah*" (not others) is the Shariah. So if the text is contrary to "*maslahah*," then *maslahah* is prioritized (*'ala sabil al-takhsis*). Despite that, according to Al-Ghazali (1993), Shariah (not others) is "*maslahah*" so the *maslahah* theory is induced from the *nas* or in other words, the authority of truth lies in (belonging to) the *nas*. The middle group is led by Ash-Shatibi, indicating that *maslahah* and Shariah are one unity (Wiryanto, 2023). The view is that if *maslahah* contradicts the text, then *maslahah* takes

precedence, not rejecting the text, but ending the text, which is *amm* (general) and that only in domains other than worship. As mentioned by Laldin (2010), Al-Shatibi points out that this is the purpose of the Quranic Ayat No. 107 of surah Al Anbiya:

"We have not sent you but as a mercy for all creatures".

Apart from that, the support for *maslahah* can also be found in these three Quranic Ayat:

Surah Al'An'am (6:153):

"Verily, this is My way, leading straight, so follow it, and do not follow (other) paths for they will scatter you about from His (great) path. Thus, does He command you that you may be righteous."

As well in Surah Hajj (22:78):

"And He has imposed no difficulties in your religion"

and in Surah Al-Maidah (5:6):

"Allah does not wish to place any burden upon you; He only wishes to cleanse you and perfect His favour upon you so that you may be grateful"

The Ulama have quoted some Hadith in support, such as the following:

- a) "No harm shall be inflicted or tolerated in Islam".
- b) "The Prophet (S.A.W) only chose the easier of two alternatives so long as it did not amount to a sin".
- c) "Allah loves to see that His concessions (*rukhsah*) are observed, just as He loves to see that His strict laws (*azaim*) are observed".

These hadith would confirm that no unnecessary rigour is recommended in the enforcement of *ahkam* (rulings) and that Muslims should avail of the flexibility and concessions of Shariah.

Conditions of validity

However, can *maslahah mursalah* neither be enumerated nor forecasted in advance as they change according to time and circumstances? According to Ishak (2019a), due to its flexibility, the application of *maslahah* as one of the Shariah sources can easily be manipulated if it is used inappropriately. To validate *maslahah*, some conditions have to be met (Eldersevi & Haron, 2020; Ishak, 2019a; Zakiah & Amsari, 2023). These parameters have been discussed in depth by the Shariah scholars, in such that it has become an important part of the *maslahah* system. Thus, following and considering these parameters will prevent Shariah scholars from using *maslahah* as a Shariah basis in an inappropriate manner. These conditions are that *maslahah* must be genuine (*haqiqiyyah*), general (*kulliyah*), secured for all, and finally, it must not conflict with clear Nass (Quranic verse). The *maslahah* must be genuine: there must be a sensible probability that the benefits of enacting a rule based on *maslahah* outweigh the harms that might result from it. As for the second condition, *maslahah* must be general: it should prevent harm or give benefits to the people as a whole and not to a certain specific person or group of persons. Due to this, legislating a rule

based on *maslahah* must include the benefit of the majority of people. This is because the whole concept of *maslahah* is meant to ensure the well-being of the people at large. Finally, the *maslahah* must not be against the principle or value which is upheld by the Quran, Sunnah or *ijma'* (Laldin, 2010).

APPLICATION OF *MASLAHAH* IN ISLAMIC BANKING AND FINANCE

The issues of human life will grow more complicated and diversified as civilization and progress advance, necessitating the need for legal clarity (Sari, 2024). The role of *maslahah mursalah* has become pivotal in today's time, especially when it comes to applying Islam in the reality of today's lifestyles. With radical changes in technology, politics, economy and society, *maslahah mursalah* plays a significant role in reforming Islamic practices (Al-Khadimi, 2010).

Buying and selling transactions are an integral part of *muamalah*, where currently buying and selling are not only geared towards meeting daily needs but have evolved into a way to achieve personal satisfaction and achieve substantial financial returns (Macsudov et al., 2024). Thus, every activity related to *muamalah* aspects requires clear regulations to ensure no fraud between parties that can harm others.

Several previously unheard-of advancements in the field of Islamic economics and well as Islamic finance also necessitated legal clarity regarding the applicability of these models and products, given the lack of any relevant texts that could be referred to. Many economic issues cannot be easily solved using the conventional approach by previous scholars due to the difficulties in obtaining texts on certain issues. Therefore, the process of determining *maslahah mursalah* law can be used as a replacement method of deciding Islamic law.

Islamic finance is an active financial market, creating new products and bringing innovation to the finance industry. Muslim jurists are required to practice *ijtihad* to ensure that the products are Shariah-compliant. These bases could be evidence derived from the Quran, Sunnah or *ijma'* on the same matters. However, not every issue can be found in the mentioned sources, resulting in the scholars looking at the less referred sources of Shariah such as *maslahah*, *'urf* and others (Ishak, 2019a).

Establishment of Islamic banking and finance institutions

An example of the application of *maslahah mursalah* in Islamic finance is the establishment of Islamic banking and finance institutions (Ishak, 2019a; Islam, 2024; Safa'ah et al., 2024; Zakiah & Amsari, 2023). The financial system is an important means in the civilization of modern society. A bank is an essential part of the economy serving the society. With all their roles, banks have integrated themselves into today's society to the point that they are no longer separated. Starting from money saving and borrowing, banks have evolved into many types of activities in assisting the customers such as paying utility bills, making transfers, and even directing aid funds to the unfortunate. However, conventional bank practices involve elements that are prohibited by Shariah law as they apply *riba* (interest) and *gharar* (uncertainty) in their operations. In Islam, values and ethics are not separated in economic behaviour and commercial transactions. Islamic values are infused into human behaviour in their daily economic life. Despite in need for bank services, the Muslim community is not allowed to engage in any activities that are against the Shariah law (Abedifar et al., 2016; Ben Mohamed et al., 2021). Therefore, Islamic banks are introduced which operate under the prohibitions of *riba*, *gharar* and *maysir* (gambling), which are practiced in their conventional counterparts. Conceptually, the establishment of banking institutions is not mentioned in

Islam. Despite that, neither the Quran nor the Sunnah contained any specific verse that disapprove the establishment of banking institutions, which follows the third validity condition of *maslahah*. With the establishment of these Islamic banks, the benefits expand and many people can benefit from it, fulfilling the second condition of the validity of *maslahah*. In addition, these benefits also are not in conflict with the Quranic and hadith texts. As *riba* is prohibited, Islamic banks are allowed to conduct buying and selling transactions with employers and customers, using *murabahah* (mark-up), *ijarah* (leasing), *istisna* (forward) and *salam* (forward) schemes (Salman & Nawaz, 2018). These policies were developed by the government for the Islamic banking institutions using *maslahah mursalah*. The Islamic financial system contains *maslahah* values from various aspects of the people, nation, and religion. For this reason, they should be supported to create an economic system inspired by *uluhiyah* (divinity), *nubuwwah* (prophethood), trustworthiness, fairness and balance (Renie et al., 2019).

Establishment of Islamic capital markets

Maslahah mursalah is used in determining the right legal solution in situations that are not regulated by Islamic law which includes dealing with new issues such as banking and finance, politics, medical issues and problems associated with Muslim minorities (Al-Qaradawī, 2006). Due to this, many resolutions from Islamic bodies, fatwas and Islamic rules are developed on the grounds of *maslahah mursalah*. An example in the practice of Islamic finance is the determination of investment policies using *maslahah mursalah* that profits the society in general. This is supported by the *Dallah al-Baraka*, *Fatwa no.10/19*:

“The committee supports your initiative to realize the general public interest (maslahah) of the Muslims; thus, it recommends that investments should not be expanded in stocks or international commodities or similar investments, the benefit of which is limited to profit-making and does not contribute to the strengthening of the Islamic economy” (Abu Ghuddah, 2007).

Capital markets are considered an essential part of today’s financial system and provide platforms for investors to invest in productive ventures (Narayan & Narayan, 2013). Due to that, one of the innovations by Muslim scholars to promote a harmonious connection between the modern capitalistic world and Islamic traditions is the establishment of the Islamic capital market. The Islamic capital market aims to gain the attention and trust of potential Muslim investors, which may optimize their economic advantages. However, the criteria for identifying Islamic stocks and indices through the Shariah index screening differs among Islamic scholars (Rizaldy & Ahmed, 2019). This is due to various interpretations of Shariah sources when applied to the complex nature of current capital markets with complex investment instruments (Derigs & Marzban, 2008). These stocks and indices underwent both qualitative and quantitative screening to be considered Shariah-compliant. The use of *maslahah mursalah* in identifying the best financial standards and its principles in screening standards is accepted to maximize benefits for investors.

The existence of renewal in *mudarabah* transactions such as collateral obligations and revenue sharing as a method of profit sharing

Every business will either make money or lose money under the profit-sharing scheme; hence, it is illogical for the economy to solely embrace one of the two possible scenarios. Due to that, profit-sharing businesses must be according to Shariah principles without containing any elements of *riba*, *gharar* and *maysir* as well as forbidden from producing illicit goods such as pork and *khamr* (liquor) (Islam, 2024). The banks and customers must share the proportional benefits. The profit-sharing contract offered by the Islamic bank or the *mudarabah* contract applies the Islamic concept of a personal relationship between two or more people in the form of a work contract (Safa’ah et al., 2024). The capital owner in this case is the bank, known as

rabb al-mal, who gives the money to a trusted person or customer of the bank, known as *mudarib* (entrepreneur). The *mudarib* will use the money as working capital and the profit obtained is divided according to the contract agreed. *Mudarabah* financing is a high-risk financing, as the bank is at risk of facing problems from the *mudarib* which may come from non-performing financing despite how well the due diligence is performed by the bank. To minimize the risk, Islamic banks ask for additional collateral as collateral for the financing to ensure that the capital given to the *mudarib* is expected to return to normal following the provisions at the time of the contract. Thus, *maslahah mursalah* is applied when providing financing whereby Islamic banks must consider methods that do not harm the bank, in securing the funds that had been trusted on them, by the customers. Considering that Islamic banking institutions function as intermediaries for the flow of money in society, banks must maintain the trust of customers without revoking the principle of collateral which is not allowed in *mudarabah* financing. Therefore, banks ask for additional collateral based on the principles of *usul fiqh*, which is *maslahah mursalah* (Zakiah & Amsari, 2023).

Late payment issue; *ta'widh* and *gharamah*

Another issue in the banking industry is the late payment charges to prevent banks from losing money. As *riba* is prohibited, Islamic banks are not allowed to charge borrowers who are due in their payment, as this falls under a form of interest. However, as intermediaries, banking institutions do not represent sole lenders as they take capital from the surplus units side and give financing to the deficit units side (Ishak, 2019a). The surplus units side represents depositors, investors and public funds whereas the deficit units include government bodies, trading entities, business companies and individuals in need of a large amount of money to fulfil their operations. By not implying a late payment penalty, the operations of Islamic banks will be at risk, as they rely heavily on such funds (Yaakub et al., 2014). On top of that, any delay in payment would immediately cause higher expenses for the financier, the Islamic banks, as they need to bear the cost of sending letters and notices, legal fees, and other associated charges. Thus, delaying payment due to bad attitude, negligence or tricks to avoid the commitment, the late payment penalty is allowed under *maslahah mursalah* to protect Islamic banks and their funds.

Due to the *maslahah* behind this issue, many bodies allow banks to apply late payment charges but with different approaches. The International Islamic Fiqh Academy (IIFA) has allowed Islamic banks to enclose a penalty clause in a financial contract, the *ta'widh* is imposed based on actual loss, if late payment occurs. However, this penalty must also differ from the late penalty in conventional banking and should not be treated as profit (Ishak, 2019b), to correspond with the verse. On the other hand, in its Shariah standards, The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) stated that *ta'widh* should not be imposed but agreed that all expenditures incurred by creditors due to the debt settlement process must be charged to the debtors. AAOIFI also allowed *gharamah* (penalty), where in the case of delayed payment, debtors must pay a certain amount of money which will be donated to the charitable bodies.

Zakat financing

Zakat is the third pillar of Islam and all Muslims are obliged to pay zakat (Islam, 2024). Zakat has assisted Muslims in many aspects of their life. The collection of zakat is distributed to the *asnaf* but questions arise whether the zakat distributed benefited these *asnaf* as receivers. Thus, some studies suggested that zakat distributed has failed to reach its aims as the fund has not been appropriately utilised. Due to that, zakat financing is proposed to enhance the zakat distributions and benefits. Zakat financing can be applied

through *qard al-hasan*, commodity *murabahah*, *musharakah mutanaqisah* or other Shariah contracts (Adnan, 2019; Adnan, 2021; Mahmud et al., 2024).

However, zakat financing is a contemporary Shariah issue which brings dispute among Shariah scholars on its permissibility. The majority of Shariah scholars opposed it and some modern Shariah scholars proposed it. According to Mahmud et al. (2024), modern scholars such as Ibn Hazm (1998), Ibn Munzir (1999), Ibn Qattan (2004), Ibn Hubairah (2009), and Al-Luhaydan (2018) did not mention specifically the prohibition of granting financing from the zakat fund. According to the Shariah scholars, zakat financing is permissible due to Shariah justifications which are *maslahah* and *hajah*. The element of *tajdid* (renewal) is proposed to be the main essence for discovering various enhancements in zakat management. This is based on the hadith narrated by Al-Bukhari;

Some people from the Uraina tribe came to Medina and its climate did not suit them, so herd camels (given as zakat) and they drank their milk and urine (as medicine).

Based on this hadith, it is permissible to take the milk without having the right of the camels (as it is considered as zakat items), the same analogy applies to other benefits from it such as riding the camels and others. The same analogy justifies the permissibility of granting financing from the zakat fund as it is considered a benefit (*manfaah*) from the zakat items and the amount will be returned accordingly. Considering *masalih mursalah* (consideration of the public interest) as one of the Shariah justifications, according to Maliki mazhab, some Shariah scholars explored the possibility of granting financing from the zakat fund to help entrepreneurs repay their existing financial obligation. Should the zakat financing receiver die before paying his obligation, the financing granted will be considered zakat *gharimin* and is not required to be repaid (Zahrah, 1951).

CONCLUSION

The topic of *maslahah* is important in Islamic banking and finance, where any decision must consider the consequences of an action in terms of *maslahah*. Nevertheless, every issue should be discussed separately in the search for a solution and not just decide to ban it. *Maslahah* is a very suitable source for regulators and policymakers to rely upon, when necessary, in setting up regulations, guidelines, parameters and standards. The existence of Islamic banking and finance institutions allows the Muslim population to benefit from the services offered by the banking institutions which has integrated as an important sector in modern society, without involving in the activities prohibited by the Islamic law. The Islamic capital market provides the opportunity for Muslim investors to invest in Shariah-compliant stocks, maximize their profits and contribute to the growth of the economy. Collateral obligations and revenues from profit and loss in the high-risk *mudarabah* financing allow banks to have additional collateral to minimise risks and maintain the trust of their customers at the same time. And finally, the implementation of *ta'widh* and *gharamah* is *maslahah* to protect Islamic banks, as well as their depositors and their funds. Granting financing from the zakat fund is regarded as *maslahah mursalah* as it carries benefits to the receiver. Most of the justifications given are based on analogy, *maslahah* (benefits), and *hajah* (need). If it is not addressed, it may reach a *darurah* (necessity). The zakat financing could be an alternative to the microloan which is prohibited in Islam because of the element of *riba* and to help the entrepreneurs repay their existing financial obligation. It can be concluded that the implementation of *maslahah* aims to sustain the feasibility of Islamic banks and provide transparency and fairness between Islamic banks and their customers. The implementation of *maslahah* not only considers the classical and modern jurists through their *fatwas* but is also regulated under the authorized Islamic scholar authority, such as the Shariah Advisory Council of Bank Negara Malaysia.

ACKNOWLEDGEMENT

This research received no specific grant from any funding agency in the public, commercial, or not for profit sectors.

REFERENCES

- Abedifar, P., Hasan, I., & Tarazi, A. (2016). Finance-Growth Nexus and Dual-Banking Systems: Relative Importance of Islamic Banks. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.2614180>
- Abu Ghuddah, A. S. (2007). *Al-Fatawa al-Shar'iyah li Majmuk at al-Barakahal-Ma'rifiyyah*. Majmuk at Dallah al-Barakah al-Ma'rifiyyah.
- Adnan, N. I. M. (2019). The potential for implementing microfinancing from the Zakat fund in Malaysia. *Humanities and Social Sciences Reviews*, (Humanities and Social Sciences Reviews, 7(4)), 524–548. . <https://doi.org/https://doi.org/10.18510/hssr.2019.7473>
- Adnan, N. I. M., Roselam, M. A. C., Hamat, Z., & Furqani, H. (2021). The Distribution of Zakat Fund to the Poor Entrepreneurs Using Micro Finance. *International Journal of Academic Research in Business and Social Sciences*, 11(2), 231–240. <https://doi.org/https://doi.org/10.6007/ijarbss/v11-i2/8666>
- Al-Azhari, M. I. A. A.-H. (2001). *Tahdhib al-Lughah*. Dar Ihya' al-Turath al-'Arabi.
- Al-Ghazali, M. I. M. (1993). *Al-Mustasfa Min 'Ilm al-Usul ('Abd al-Shafi Muhammad 'Abd alSalam, ed.)*. Dar al-Kotob al-Ilmiyah.
- Al-Khadimi, N. (2010). *Al-Ijtihad al-Maqasidi*, . Dar Ibn Hazm.
- Al-Lakhma, R. A. a.-W. A. a.-T. (1987). *Al-Ta'li' Bi al-Maslahah 'Ind al-Usuliyyin*. Dar al-Huda Li al-Tiba'ah.
- Al-Mubarak, T., & Osmani, N. (2010). *Applications of Maqasid al-Shariah and Maslahah in the Islamic Banking Practices: An Analysis*. <https://doi.org/10.13140/RG.2.1.3578.0644>
- Al-Qaradawi, Y. (2006). *Dirasat fi Fiqh Maqasid al-Shari'ah bayna al-Maqasid al-Kulliyah wa al-Nusu al-Juz'iyyah*. Dar al-syuru.
- Al Bugha, M. (1999). *Āthar al-Adillat al-Mukhtalaf Fīha fī al-Fiqh al-Islam*. Dar al-Qalam.
- Alias, M. N. (2021a). A Review of Maslahah Mursalah and Maqasid Shariah as Methods of Determining Islamic Legal Ruling. *Turkish Journal of Computer and Mathematics Education (TURCOMAT)*, 12(3), 2994-3001.
- Alias, M. N. (2021b). A Review of Maslahah Mursalah and Maqasid Shariah as Methods of Determining Islamic Legal Ruling. *Turkish Journal of Computer and Mathematics Education (TURCOMAT)*, 12, 2994-3001. <https://doi.org/10.17762/turcomat.v12i3.1331>
- Anjani, T., & Sunardi, D. (2024). Merger Of Bank Muamalat And Bank Btn Syari'ah (Maslahah Mursalah Perspective). *INTERNATIONAL JOURNAL OF ECONOMIC LITERATURE*, 2(2), 549-554.
- Ashur, M. A.-T. I., & El-Mesawi, M. E.-T. (2006). *Ibn Ashur Treatise on Maqasid al-Shari'ah*. International Institute of Islamic Thought. <https://doi.org/10.2307/j.ctvkc673b>
- Asiah, N. (2022). Masalah Menurut Konsep Al-Ghazaali. *DIKTUM*, 18(1), 118–128.
- Ben Mohamed, E., Meshabet, N., & Jarraya, B. (2021). Determinants of technical efficiency of Islamic banks in GCC countries. *Journal of Islamic Accounting and Business Research*, 12(2), 218-238. <https://doi.org/10.1108/JIABR-12-2019-0226>

- Bank Negara Malaysia (2010). Resolutions of Shariah Advisory Council Bank Negara Malaysia. <https://www.bnm.gov.my/-/resolutions-of-shariah-advisory-council-bank-negara-malaysia>
- Derigs, U., & Marzban, S. (2008). Review and analysis of current Shariah-compliant equity screening practices. *International Journal of Islamic and Middle Eastern Finance and Management*, 1(4), 285-303.
- Eldersevi, S., & Haron, R. (2020). An analysis of based resolutions issued by Bank Negara Malaysia. *ISRA International Journal of Islamic Finance*, 12(1), 89-102. <https://doi.org/10.1108/IJIF-09-2018-0103>
- Ishak, M. S. I. (2019a). The principle of maṣlaḥah and its application in Islamic banking operations in Malaysia. *ISRA International Journal of Islamic Finance*, 11. <https://doi.org/10.1108/IJIF-01-2018-0017>
- Ishak, M. S. I. (2019b). Shari'ah issues on ta'widh in Malaysia. *International Journal of Islamic and Middle Eastern Finance and Management*, 12(4), 523-531.
- Islam, M. T. (2024). The Shari'ah Foundation of Islamic Banking. *Journal of Islamic Banking and Finance Jan-Mar*, 9.
- Laldin, M. A. (2010). Understanding the concept of maslahah and its parameters when used in financial transactions. *ISRA International Journal of Islamic Finance*, 2(1), 61-84.
- Macsudov, V. G., Amsalu, A., Souza-Junior, J., & Tattaqillah, N. (2024). Implementation of Salam Contracts in the Sharia Principles Framework: Surveys and Prospects in the Field. *Demak Universal Journal of Islam and Sharia*, 2(02), 111-132.
- Mahmud, M., Syafiq, M. A., & Berhad, M. I. (2024). Shariah Views On Zakat Financing And Its Implementations.
- Meirison, M. (2017). Implementasi Tanqih Al-Manath dalam Penerapan Hukum. *Nizham: Jurnal Studi Keislaman*(Sept 2017), 94-111. <https://e-journal.metrouniv.ac.id/nizham/article/view/868>
- Narayan, P. K., & Narayan, S. (2013). The short-run relationship between the financial system and economic growth: New evidence from regional panels. *International Review of Financial Analysis*, 29, 70-78.
- Qaed, I., Syaputra, E., Hilal, F. N., Febriansyah, M., Amiruddin, M. M., & Aziz, M. R. A. (2014). Maslahah as an Islamic source and its application in financial transactions. *Journal of Research in Humanities and Social Science*, 2(5), 66-71.
- Remiswal, R., Angraini, A., Boti, A., & Nazar, Z. (2021). Introduction to Qiyas and Maslahah Mursalah and Its Application In The Future. *YUDISIA : Jurnal Pemikiran Hukum dan Hukum Islam*, 12, 241. <https://doi.org/10.21043/yudisia.v12i2.10425>
- Renie, E., Luth, T., & Hamidah, S. (2019). The Maslahah Concept in the Islamic Finance Institutions. *JL Pol'y & Globalization*, 87, 117.
- Rizaldy, M. R., & Ahmed, H. (2019). Islamic legal methodologies and Shariah screening standards: Application in the Indonesian stock market. *Thunderbird International Business Review*.
- Rosyadi, I., Ruma, A. F. H., Fatimah, M., & Yaman, N. (2024). Syathibi's Thoughts on Maslahah Mursalah and its Impact on The Development of Islamic Law. *Journal of World Thinkers*, 1(01), 63-74.
- Safa'ah, A., Adinda, A. P., & Zahra, B. M. (2024). The Funding Issues With The Concept Of Interest and The Implementation Of Mudharabah Contracts In Islamic Banking Funding Systems. *ShariaLex: Journal of Islamic Law and Legal Studies*, 1(1), 10-18.
- Salman, A., & Nawaz, H. (2018). Islamic financial system and conventional banking: A comparison. *Arab Economic and Business Journal*, 13(2), 155-167. <https://doi.org/https://doi.org/10.1016/j.aebj.2018.09.003>
- Sari, N. (2024). Maslahah Mursalah As A Consideration For Completion Of Islamic Law Based On The Maqāṣid Shari'ah Principle. International Conference on Humanity Education and Society (ICHES),

- Tahir, T. (2020). The Concept Of Maslahah According To Imam Al-Ghazali. *Jurnal Al-Dustur : Journal of politic and islamic law*, 3, 22-29. <https://doi.org/10.30863/jad.v3i1.642>
- Wiryanto, F. S. (2023). The Urgency and Strategic Role of Maqasid Shari'ah and Maslahah in Responding to The Legal and Economic Challenges of Muslim Business. *Journal Of Middle East and Islamic Studies*, 10(1). <https://doi.org/https://doi.org/10.7454/meis.v10i1.158>
- Yaakub, E., Adil, M. A. M., Husin, A., Muhamad, M. D., Khalid, M. M., & Shahrudin, M. S. (2014). A Revisit to the Practice of Late Payment Charges by Islamic Banks in Malaysia. *Jurnal Pengurusan*, 42.
- Zahrah, A. (1951). *Fatawa Syeikh Muhammad Abu Zahrah*.
- Zakiah, Z., & Amsari, S. (2023). Al-Mashlahah Al-Mursalah And Istishlah In Sharia Economic Practice. Proceeding International Seminar of Islamic Studies,