

FIQH MU'ĀMALAH IN THEORY AND PRACTICE: AN OVERVIEW OF ISLAMIC ECONOMICS

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Abstract

The Islamic economic paradigm and worldview have resulted in competitive Islamic finance industry in global finance. In the face of intense competition in the global financial industry, Islamic finance requires innovative contracts or products based on sharia through fiqh mu'āmalah. This article aims to understand the issue of fiqh mu'āmalah in Islamic economics. Using descriptive analysis, the author describes the relationship between fiqh mu'āmalah and sharia finance and the prohibition of mu'āmalah, hybrid-contract, Maqāshid sharia, and its supervision. The conclusion in this article clarifies the concept of the prohibition of fiqh mu'āmalah to its supervision without hindering the innovation of Islamic financial activities.

Keywords: Fiqh Mu'āmalah, Islamic Economics, Maqāshid Sharia, Sharia Supervision, Hybrid Contract.

Abstrak

Paradigma ekonomi Islam dan cara pandangnya (worldview) telah menghasilkan industri keuangan syariah yang kompetitif dalam keuangan global. Dalam menghadapi persaingan sengit industri keuangan global maka keuangan syariah membutuhkan akad atau produk yang inovatif berbasis syariah melalui fiqh mu'āmalah. Artikel ini bertujuan untuk memabami isu fiqh mu'āmalah dalam studi ekonomi Islam. Dengan menggunakan analisis deskriptif, penulis mendeskripsikan hubungan fiqh mu'āmalah dan keuangan syariah serta larangan mu'āmalah, multi akad, Maqāshid syariah dan pengawasannya. Kesimpulan dalam artikel ini menjernihkan konsep tentang larangan fiqh mu'āmalah hingga pengawasannya tanpa menghambat inovasi dari aktivitas keuangan syariah.

Kata Kunci: Fiqh Mu'āmalah, Ekonomi Islam, Maqāshid Syariah, Pengawasan Syariah, Multi Akad.

INTRODUCTION

Islamic economics is a discipline that applies sharia rules in dealing with the allocation of scarce resources to achieve spiritually, morally and materially prosperous individuals and societies. This discipline deals with basic realities and solutions to economic problems guided by sharia, namely the Qur`ān and Sunnah. According to Tahir, the basis of sharia in an Islamic economy supported by fiqh is an important key in building an Islamic economy.¹

Its practical application in Islamic economics has primarily been seen in Islamic finance. So do not be surprised if Islamic financial institutions means (Lembaga Keuangan Syariah, referred to as LKS) get very significant attention in Islamic economics.² LKS is not limited to banking only but

Journal of King Abdulaziz University-Islamic Economics 30, no. 1 (2017), <https://doi.org/10.4197/Islec.30-1.1>.

² Umar A. Oseni, "Craig R. Nethercott and David M. Eisenberg (Eds): Islamic Finance: Law and Practice: Oxford: Oxford University Press, 2012, Pp. Xxiii + 346. ISBN: 978-0-19-956694-5," *European Journal of Law and Economics* 36, no. 1 (August 2013): 231–35, <https://doi.org/10.1007/s10657-012-9338-z>.

¹ Sayyid Tahir, "Islamic Economics and Prospects for Theoretical and Empirical Research,"

includes insurance, pawnshops, cooperatives, etc.³ The presence of LKS provides services to the public similar to conventional financial institutions but is very different in the concept applied.⁴

The rapid development of LKS is recorded in several survey reports.⁵ With such an impressive development⁶ LKS needs competitive products and services. It means that the contracts used in LKS are more complex than before.⁷ The implication of the complexity of these products and services is the increase in mu'āmalah fiqh studies that discuss the use of contracts that have no references in the previous era.

To support the development of the LKS industry, the support of educational institutions, literacy programs, research, seminars on mu'āmalah fiqh is essential. This activity aims to raise public awareness.⁸ According to Jalil and Rahman, fiqh mu'āmalah, or contract law, is very relevant in improving business activities and legality so

that it does not conflict with sharia.⁹ The latest report notes that the growth in the number of institutions offering Islamic finance courses was more than 972 in 2019. Meanwhile, between 2017 and 2019, there were 2566 scientific publications on Islamic finance. Indonesia occupies the country with the highest number of Islamic financial education services globally and the second highest after Malaysia in publication.¹⁰ Considering the institution's size and a large number of publication outputs, the study of mu'āmalah fiqh in the context of Islamic economics is essential.¹¹

Zuhaili has reviewed several studies on the importance of fiqh that fiqh is the study of law originating from Allāh SWT, which is different from positive law.¹² Fiqh can distinguish between halal and haram. Fiqh can help a person to understand the Qur'ān and Hadith better. Likewise, Ismail and Tohirin's study in the context of Islamic finance states that a good legal system will affect service quality, which ultimately increases the efficiency of resource allocation and economic growth.¹³

In this article, the author will present mu'āmalah fiqh in the context of existing Islamic economic research. This study will

³ Samy Nathan Garas and Chris Pierce, "Shari'a Supervision of Islamic Financial Institutions," *Journal of Financial Regulation and Compliance* 18, no. 4 (November 16, 2010): 386–407, <https://doi.org/10.1108/13581981011093695>.

⁴ Carlo Mastrosimone, "Introduction to the Practices and Institutions of Islamic Finance Between the Islamic World and the West," *Journal of Global Policy and Governance* 2, no. 1 (July 2013): 121–32, <https://doi.org/10.1007/s40320-013-0025-4>.

⁵ Mumtazi Hussain, Ashghar Shamoradi, and Rima Turk, "An Overview of Islamic Finance," Working Paper, 120 (International Monetary Fund, 2015).

⁶ Nihayatul Masykuroh et al., "Cycle Business on Islamic Bank: Var Approach," *Talent Development*, 2020, 12.

⁷ Muhammad Iman Sastra Mihajat, "Hybrid Contract in Islamic Banking and Finance: A Proposed Shariah Principles and Parameters for Product Development" 2 (2014): 11.

⁸ Sumaira Khawar and Aamir Sarwar, "Financial Literacy and Finance Behavior with the Mediating Effect of Family Financial Socialization in the Financial Institutions of Lahore, Pakistan," *Future Business Journal* 7, no. 27 (2021): 1–11, <https://doi.org/10.1186/s43093-021-00064-x>.

⁹ Abdul Jalil and Muhammad Khalilur Rahman, "Islamic Law of Contract Is Getting Momentum" 1, no. 2 (2010): 18.

¹⁰ ICD-REFINITIV, "Islamic Financial Development Report 2020" (Islamic Corporation for the Development of the Private Sector, 2020), www.refinitiv.com/en/islamic-finance.

¹¹ Abderrazak Belabes, Ahmed Belouafi, and Mohamed Daoudi, "Designing Islamic Finance Programmes in a Competitive Educational Space: The Islamic Economics Institute Experiment," *Procedia - Social and Behavioral Sciences* 191 (June 2015): 639–43, <https://doi.org/10.1016/j.sbspro.2015.04.300>.

¹² Wahbah Az-Zuhaili, Budi Permadi, and Abdul Hayyie Al-Kattani, *Fiqih Islam Wa Adillatuhu*, vol. 1 (Jakarta: Gema Insani, 2011).

¹³ Abdul Ghafar b. Ismail and Achmad Tohirin, "Islamic Law and Finance," *Humanomics* 26, no. 3 (August 31, 2010): 178–99, <https://doi.org/10.1108/08288661011074954>.

cover several aspects of the prohibition of fiqh mu'āmalah, Maqāshid sharia in Islamic economics, the use of multiple contracts in sharia finance and sharia supervision in LKS. The scope of this study seeks to fill the gap on the issue of fiqh mu'āmalah in theory and practice, namely whether the concept of mu'āmalah fiqh is in harmony with Islamic economic practice in general.

This article is based on secondary data by reviewing national and international literature and then critically analyzing it. It is done to understand the issue of mu'āmalah fiqh in Islamic economic studies. This article uses a descriptive analysis to describe the theoretical and practical aspects of mu'āmalah fiqh in Islamic economics. In its analysis, this article adopts an approach to the content of previous studies. It focuses on various aspects of mu'āmalah fiqh such as the relationship between mu'āmalah fiqh and sharia finance, prohibitions in mu'āmalah fiqh, sharia Maqāshid in Islamic economics, multi contracts and supervision of mu'āmalah fiqh, all of which are packaged in theoretical and practical framework.

DISCUSSION

Fiqh Mu'āmalah and Islamic Finance

Fiqh is etymologically a deep understanding. Terminologically it is the science of practical syara' laws that can be explored and found in detailed arguments. In this case, fiqh is a compilation of sharia law relating to human behavior. That behavior consists of words or actions from texts and other Shari'a arguments.¹⁴

Meanwhile, the word mu'āmalah in fiqh mu'āmalah is masdar from the word 'amala which means mutual action or action. Imam Mustofa in his book mentions that mu'āmalah is an activity that tends to be related to human

activities. This term distinguishes it from worship, where worship is a relationship between human activities and their God.¹⁵

Based on the discussion above, mu'āmalah fiqh can be referred to as all the rules of Islamic law relating to human behavior that specifically discuss property issues. So mu'āmalah fiqh covers commercial transactions such as buying and selling, leasing, and so on which are based on the Qur`ān and Hadith as the main sources in fiqh.

The Qur`ān, which is the primary source of fiqh is still general in nature. In the first verse of al-Mā'idah, Allāh SWT assigns believers to fulfill their contracts or contractual obligations. The term contract or contract is still very common. Then in al-Baqarah verse 275 Allāh SWT allows buying and selling and prohibits usury transactions. However, it has not been found specifically which contracts are valid and which are not, as well as which sales and purchases are void and which are not void.¹⁶

In principle, fiqh scholars agree that the original law of mu'āmalah activities is permissible or permissible, unless textual arguments are forbidding it. By prioritizing this original law, it cannot be arbitrary to say that the transaction is prohibited, as long as there is no evidence forbidding it. It is the difference between mu'āmalah and worship. Where the law of origin of worship is haram. It means that all worship activities to Allāh SWT are prohibited unless evidence or the Shari'a allows it.¹⁷

Furthermore, a person with competence or understanding of the science of jurisprudence is called a faqih or if he has many / plural then called a fuqaha (fiqh

¹⁵ Imam Mustofa, *Fiqh Mu'āmalah Kontemporer* (Jakarta: Rajawali Pers, 2018).

¹⁶ Mahmoud A El-Gamal, *Islamic Finance: Law, Economics, and Practice* (United Kingdom: Cambridge University Press, 2006).

¹⁷ Dimyauddin Djuwaini, *Pengantar Fiqh Mu'āmalah* (Yogyakarta: Pustaka Pelajar, 2008).

¹⁴ Yayan Sopyan, *Tarikh Tasyri': Sejarah Pembentukan Hukum Islam* (Jakarta: Rajawali Pers, 2018).

experts). The role of the fuqaha is not just a lawyer for the Muslim community but also a trustworthy cleric for teaching, counseling, assessment and leadership. So that, the position of the fuqaha in community can have a direct and deep influence on society.¹⁸

In the context of Islamic economics, the role of the fuqaha occupies a strategic position. Fuqaha have the responsibility to oversee trade within a city. Their job is to determine the price of an item, set a standard scale, prevent speculation or usury. Even Hicks added that fuqaha are also involved in controlling currency exchange. For this reason, the role of the fuqaha is very prestigious and gets good pay.¹⁹

However, it is undeniable that one's understanding of jurisprudence differs, resulting in various opinions. The difference between the schools and even the fuqaha within one school itself is essentially a difference in the issue of *furu'* (branch) in Islam. It means that differences are not in the realm of principles, so harmony in Islam is maintained. Meanwhile, differences in creed is a disgrace that can damage the unity of Muslims and disperse *Ukhuwah Islamiyah*. Even in history, there are no disagreements that have resulted in conflict or war. If anything, it is usually done by followers who do not understand the teachings of their school. Therefore, studying fiqh should strengthen the unity of Muslims' unity in diversity, not the other way around.²⁰

The implication of the difference of opinion is the various forms of Islamic finance practice. One of the efforts to standardize Islamic finance was the (*Accounting and Auditing Organization for Islamic Financial Institutions* ,

referred to as AAOIFI). AAOIFI is an institution whose mission is to standardize and harmonize Islamic financial practices and reports globally in the context of sharia.²¹ Besides AAOIFI, there is also the *Islamic Financial Services Board* (IFSB). IFSB is a governance system that regulates Islamic financial institutions and organizations to ensure effective supervision of sharia rules.²²

At the practical level, Islamic economics represented by Islamic finance adopts a very simple form of problem solving through the following three steps:

1. Identify financial products in general that are considered contrary to sharia
2. Building the qiyas method on these financial products so that they can be easily accepted, coupled with Arabic names that can give confidence to the wider community.
3. The structure of Islamic finance that is sold or offered to the public is generally very similar to the conventional structure or pattern. So the stereotype that Islamic finance is no different from conventional finance has become an issue in society.

From solving these problems, there is a tug of war between perceptions or stereotypes between sharia and conventional, which impacts the inefficiency and credibility of a sharia financial product. This risk is reflected in murabaha transactions. In theory, murabahah is a legal contract that is a replication of conventional products, but in practice, murabahah loses its substance

¹⁸ Stephen C. Hicks, "The Fuqaha and Islamic Law," *The American Journal of Comparative Law* 30, no. suppl_1 (1982): 1–13, <https://doi.org/10.1093/ajcl/30.suppl1.1>.

¹⁹ Hicks.

²⁰ Az-Zuhaili, Permadi, and Al-Kattani, *Fiqh Islam Wa Adillatuhu*.

²¹ Jonathan Ercanbrack, "The Standardization of Islamic Financial Law: Lawmaking in Modern Financial Markets," *The American Journal of Comparative Law* 67, no. 4 (December 31, 2019): 825–60, <https://doi.org/10.1093/ajcl/avz010>.

²² Nawal Kasim, Sheila Nu NuHtay, and Syed Ahmed Salman, "Comparative Analysis on AAOIFI, IFSB and BNM Shari'ah Governance Guidelines" 4, no. 15 (November 2013): 220–27.

towards a just economy, even though it can move the wheels of the economy. However, the exploitation of the poor which makes them more consumptive ultimately makes murabahah no different from conventional loans.²³

Islamic Prohibition in Fiqh Mu'āmalah

The essence of prohibition in Islam is that there is a greater danger contained in the prohibition. The case of the prohibition of khamr and gambling contained in al-Baqarah verse 219. It explicitly explains that "in both there is a great sin and some benefits for humans. However, the sins of both are greater than the benefits." This argument can be used to refute allegations of inefficiency in prohibition. Because legal theorists have agreed that Allāh SWT never forbids anything good, even the world and everything in it is subject to humans by Allāh SWT. It is written in the Qur`ān Surah al-Hājj verse 65 and al-Jatsiyah verse 13.

In general four activities are considered based on their benefits and harms. First, it is useful and the benefits can be seen. Second, it is useful but the benefits are not clearly visible. Third, it is dangerous and the danger is very clear. The fourth are dangerous but the danger is not obvious. The prohibition of khamr and gambling can be classified in category four where the danger is not visible. Humans can still enjoy gambling games and even intoxicating drinks, but after the prohibition is violated, health hazards threaten human life.

In the context of fiqh mu'āmalah or sharia finance, there are two prohibited transactions, namely gharār and usury. The prohibition of gharār and usury is included in the fourth category, which is dangerous but the danger is not visible. If khamr and gambling threaten human life through physical health, then gharār and usury endanger human

life through property, one of Maqāshid Sharia (*hifz al-māl*). To reveal the dangers of gharār and usury more clearly, this article will briefly describe *gharār* and *usury*.

Usury

The main principle of Islamic economic activity is the prohibition of usury²⁴, where usury itself is an important element in the current financial system.²⁵ Arif means that usury is in addition to financial activities that ignore or violate the rules of sharia principles.²⁶ According to him, the important elements contained in usury are the additional principal of the loan, the additional size depends on the period, then the amount of payments added is based on the agreed agreement.

This prohibition is nothing new. Because the religious rules regarding usury existed before Islam was revealed.²⁷ Riba itself means additional or surplus. In sharia itself, usury means addition to the principal, which impacts additional payments for the money used by previous provisions or agreements. This additional form is not legal in sharia.²⁸

In general, two forms of usury developed, namely nasi'ah and fadhl. Riba nasi'ah can simply be understood through debt transactions that increase with an interest scheme. Meanwhile, usury fadhl is a form of usury that occurs between traders and buyers. Referring to the hadith of the Prophet SAW,

²⁴ Madiha Khan, "Islamic Banking Practices: Islamic Law and Prohibition of Ribā" 50, no. 3 (2011): 4.

²⁵ Yusuf Talal Delorenzo, "Introduction to Understanding Riba," in *Interest in Islamic Economics Understanding Riba* (New York: Routledge, 2006).

²⁶ MNR Al Arif, *Pengantar Ekonomi Syariah* (Bandung: Pustaka Setia, 2015).

²⁷ Syafii Antonio, *Bank Syariah: Dari Teori Ke Praktik* (Jakarta: Gema Insani, 2001), <https://books.google.co.id/books?id=r3yFiZMvgdACa&ndprintsec=frontcover&source#v=onepage&qandf=false>.

²⁸ H. Visser, *Islamic Finance: Principles and Practice* (Cheltenham, UK ; Northampton, MA: Edward Elgar, 2009).

²³ Beebee Salma Sairally, "Murabahah Financing: Some Controversial Issues," no. 12 (2002): 14.

there are six types of usury fadh items, namely gold, silver, wheat, barley, dates and salt. If these six types of goods are exchanged for the same goods and there are differences in quality and quantity, they can be classified as usury fadh. As a solution to avoid usury fadh, if someone wants to exchange dry dates weighing 2 kg for wet dates weighing 1 kg, he must exchange the dry dates for other commodities such as gold and then exchange the gold again with wet dates.

This practice is often complained of by traders as a long-winded practice, but if viewed on a macro scale, this solution can move the economy, namely increasing demand for gold or other determined commodities.

In the context of financial institutions, one of the manifestations of the practice of usury is bank interest. An interesting study has been carried out by O'Sullivan (2020) on how the transition from the first interest-based Muslim bank in the early 20th century. During the transition to the emergence of interest-free Islamic banks, it is recognized that there were unique debates and tensions in which the result was a dramatic intellectual, economic and political change in the Islamic world after 1947.²⁹

Gharār

Gharār is the most important element in mu'āmalah fiqh. In simple terms, gharār comes from an information problem. Incomplete information triggers uncertainty in the contract. It can be considered ignorance or lack of information concerning important elements in a transaction. These elements such as the right selling price as well as the ability of the seller to actually provide information about what is being sold. The existence of

gharār or uncertainty in a contract makes it null and void.³⁰

Linguistically, gharār comes from Arabic which means risk, deception and throwing oneself or property into the abyss of destruction. According to the terms of the fuqaha, gharār means buying and selling that has no clear end. Some scholars define it by buying and selling the consequences between the existence and not.³¹

For example, selling items in a box for Rp. 1 million but what is in the box is still unknown. The sale and purchase above contains an element of speculation or profit and loss, profit if it turns out that the value of the goods is more than what the buyer paid but becomes a loss if the value of the goods is less than the price paid.

According to El-Gamal, the substance of the prohibition on gharār is in risk trading.³² Of course, risk can never be completely avoided especially by entrepreneurs and no productive or commercial activity is possible without a certain level of risk and uncertainty. Only excessive risk conditions should be avoided.³³

Islam requires transparency in every transaction so that all parties avoid the risk of conflict. In modern Islamic finance, gharār is of two types: Gharār Fahish, which means a large number of unpleasant and prohibited characteristics and Gharār Yasir, which means a small number of unpleasant characteristics and tolerated by sharia law.

The prohibition of gharār is found in the hadiths that forbid the trading of 'birds in the sky or fish in the water', 'catch of divers', 'calf that has not been born in its mother's womb'.

³⁰ Zamir Iqbal and Abbas Mirakhor, *Introduction to Islamic Finance: Theory and Practice* (Singapore: John Wiley and Sons, 2011).

³¹ Erwandi Tarmizi, *Harta Haram Muamalat Kontemporer* (Berkat Mulia Insani, 2018).

³² El-Gamal, *Islamic Finance: Law, Economics, and Practice*.

³³ Visser, *Islamic Finance*.

²⁹ Michael O'Sullivan, "Interest, Usury, and the Transition from 'Muslim' to 'Islamic' Banks, 1908–1958," *International Journal of Middle East Studies* 52, no. 2 (May 2020): 261–87, <https://doi.org/10.1017/S0020743820000239>.

These are all cases where the transaction object is executed uncertainly. However, once again, considering that trading or entrepreneurial activities contain an element of uncertainty, the question of where the limits of uncertainty can be tolerated is a matter of debate by scholars.

The scholars agree that the prohibition of *gharār* aims to prevent one party from being naive or irrational in taking advantage. In economics, because of the information asymmetry factor, the strong can exploit the weak.

The prohibition of *gharār*, can be understood as prohibiting trading in risk. What is included in the prohibition is the question of cost-benefit analysis. Trading in risk/*gharār* is generally inefficient compared to other forms of risk sharing. Because the *gharār* transaction does not lead to the correct risk determination. From this it can be concluded that not all risks should be avoided so the scholars still tolerate some risks.³⁴

Importantly, however, *gharār* should not be used interchangeably with the broad concept of risk. *Gharār* is prohibited but it makes no sense to forbid risk. Islam does not even advocate risk aversion. Warde (2000) interprets the possibility of the *gharār* hadith as a prohibition of risk that affects the existence of the object transacted by the parties, not only the price. In the hadith, these risks arise, among others (1) due to the lack of knowledge of the parties (*jahl*, ignorance) about the object; (2) because the object does not exist now; or (3) because the object escapes the control of the parties. Therefore, scholars can use any of these three characteristics to identify transactions infected by risk, referred to as *gharār*.³⁵

³⁴ Tarmizi, *Harta Haram Muamalat Kontemporer*.

³⁵ Ibrahim Warde, *Islamic Finance in the Global Economy* (Edinburgh: Edinburgh University Press, 2000).

Multi Contract

The discussion of multi-contracts becomes interesting in the study of *mu'āmalah fiqh* because we will find very sharp differences of opinion among the *fuqaha*. This difference of opinion is caused by several hadiths that clearly prohibit the merging of buying and selling with accounts payable contracts (*bay' wa salaf*), merging two buying and selling contracts in one transaction (*bay'ataini fi bay'ah*), and combining two contracts in one contract. (*safqataini fi safqah*)³⁶. The jurists who have different opinions both believe in the hadith but how do they interpret it so that it becomes a different legal product.

Some literature states that there is no common definition in *fiqh* regarding multiple contracts. However, some scholars write that multi-contract is an agreement between two or more parties who agree to two or more contracts with different natures and legal consequences to achieve a proper transaction. The context of a multi-contract is that all obligations and legal consequences arise from an understanding it as an obligation.³⁷

In the study of *fiqh*, the purpose of the multi-contract prohibition is to avoid *ribawi* transactions that cause exploitation of one of the weak parties. For example, the first party delays payment for a certain period when exchanging currency. Such transactions include prohibited multi-contracts because there will be a potential loss to the party. That is when currency fluctuations occur.³⁸

³⁶ Fathullah Asni and Jasni Sulong, "Hybrid Contracts According to Islamic Perspective," *International Journal of Academic Research in Business and Social Sciences* 8, no. 5 (May 27, 2018): Pages 453-458, <https://doi.org/10.6007/IJARBS/v8-i5/4118>.

³⁷ Mohammed Burhan Arbouna, "The Combination of Contracts InShariah: A Possible Mechanism for Product Development in Islamic Banking and Finance," *Thunderbird International Business Review* 49, no. 3 (May 2007): 341-69, <https://doi.org/10.1002/tie.20147>.

³⁸ Arbouna.

However, if the above hadith is examined textually without trying to understand the context or purpose, many financial transactions today are difficult to obtain legality. Many contracts in LKS use multiple contracts, but whether LKS uses multiple contracts is forbidden. This article is not in the capacity to answer this question, but seeks to reconcile the theory and practice of mu'āmalah fiqh in the context of Islamic economics.

In the hadith found the editorial *la syarthoni fil bay'*. This hadith confuses researchers. For this reason, Arbouna (2007) explains several terms that arise from the hadith, including: (1) *rest aqd fi aqd*, (2) *tardid al aqd*, (3) *ta'dud al safaqa*.

The term *istirat aqd fi aqd* is different from *la syarthoni fil bay'*. The difference lies in the freedom of the first contract which does not bind a second contract. As an example of an *ijarah vomitiya bi tamlik* contract, in that contract there is a lease contract which ends with a transfer of ownership either by a grant contract or a sale and purchase agreement. The lease or *ijarah* contract is free or not bound by the grant contract at the end of the lease. Due to the time difference.

Karim and Syahroni in their book explain that multiple contracts are allowed as long as the parties, objects and times are not in the same condition.³⁹ An example of a prohibited *aqd fi aqd* resting case is when the seller says "I sell this car for IDR 2 billion with the same conditions you sold the car with me for IDR 1 billion." It is an example of a case of prohibited multi contracts, because of the potential exploitation of the weak.

The term *tardid al aqd* is a transaction that involves two or more sellers in one transaction agreement. For example, several sellers offer land to one buyer in one

transaction. So at that time there has been a *tardid al aqd*, when *tardid al aqd* leads to a potential dispute between the seller, the buyer has the right to cancel the contract. Therefore *tardid al aqd* is another way to form a contract and it is not a multi contract.⁴⁰

The third term is *ta'dud as safaqa*, which is a combination of contracts between two or more parties who conclude to combine several different forms of contracts and laws to achieve a product that is acceptable to both parties. For example, someone has two different assets: a house and a wardrobe. He wants to sell the old cupboard in his house. But after being offered, no one was interested. Meanwhile, he wanted to rent his house. In the end, he got around the two assets by renting out the house and selling the wardrobe. For those who rent, the consequence is that they have to buy the cupboard. This case in fiqh literature is referred to as *ijtima syay'aini fi safaq* which is allowed by fiqh experts because people who rent houses in normal conditions also need a cupboard. However, if other conditions trigger losses on the other party, the contract can be canceled.

Although most scholars allow the use of multiple contracts, all contracts must be carried out following sharia principles. For this reason, the scholars set limits, measures and criteria that can be used in determining multi-contracts that are not prohibited. Mihajat wrote that, multiple contracts are allowed as long as the principal or content of the contract. Each party knows the price and time of the transaction. If one of these elements is unclear, the multi contract is invalid.⁴¹

If we refer to the AAOIFI rules, we will find four provisions that limit multi-contracts.

⁴⁰ Arbouna, "The Combination of Contracts In Shariah."

⁴¹ Mihajat, "Hybrid Contract in Islamic Banking and Finance: A Proposed Shariah Principles and Parameters for Product Development."

³⁹ Adiwarmar Azwar Karim and Oni Sahroni, *Riba, Gharar Dan Kaidah-Kaidah Ekonomi Syariah* (Jakarta: Rajawali Pers, 2019).

(1) the multi-contracts that have been mentioned in the hadith, namely buying and selling and accounts payable, two buying and selling contracts in one agreement and two transactions in one transaction. (2) multiple contracts are made to manipulate usury transactions. (3) multiple contracts made to legalize usury. (4) multiple contracts made to violate sharia rules.⁴²

Maqāshid Sharia in Islamic Economics

The issue of Islamic Maqāshid in the last decades to this day has received attention from Islamic finance experts around the world. This condition can be seen from the many seminars and also the writings that are produced related to maqasid sharia⁴³. The relationship between Maqāshid sharia and economic activities can be seen from the standards, applications, methods, challenges and relevance associated with Maqāshid sharia.

Maqāshid sharia is a term that is absorbed from Arabic. Maqāshid has the meaning of purpose in the plural. While sharia can be understood as a rule or decree of God. Therefore, Maqāshid sharia is understood as a wisdom or wisdom that Allāh SWT affirms in the form of rules.⁴⁴

The implementation of Maqāshid Syariah in Islamic economics is an elaboration of *hifzul maal* which aims to benefit life,

especially regarding wealth. *Hifzul mal* is then understood through *Maqāshid aam* and *Maqāshid khoshoh*. *Maqāshid aam* is a general goal while *Maqāshid khoshoh* is a specific or specific goal.⁴⁵

The application of Maqāshid sharia is important in Islamic economic operations, especially in financial and business transactions. Meanwhile, the development of Islamic Maqāshid in Islamic economic studies can provide a complete meaning. This role is embodied in *Maqāshid khamsah*, namely protecting religion, soul, lineage, reason and property. The role of religion ranks first which is manifested in the form of faith and belief. It acts as a foundation that can provide a Muslim perspective in transactions in the economic field. Based on faith, a balance in material and spiritual aspects is born which is not found in conventional economic concepts.⁴⁶

In reality, modern financial practices are very complex and not conducive for Islamic finance to operate. For this reason, a special approach is needed that can harmonize modern financial practices with Islamic finance. Sharia experts believe that Maqāshid sharia is an approach that can answer these challenges.⁴⁷

In the context of Islamic economics, LKS must aim to stimulate so that the goals of Islamic economics can deliver Maqāshid sharia to its holistic position. Several previous studies have shown that socio-economic problems from the perspective of Maqāshid sharia can

⁴² AAOIFI, *The Accounting and Auditing Organization for Islamic Financial Institutions Shari'ah Standard* (Manama: The Accounting and Auditing Organization for Islamic Financial Institutions, 2015), <http://aaoifi.com/shariaa-standards/?lang=en>.

⁴³ Abdul Halim Ibrahim, Noor Naemah Abdul Rahman, and Shaikh Mohd Saifuddeen, "Maqasid Al-Shariah as a Complementary Framework for Conventional Bioethics: Application in Malaysian Assisted Reproductive Technology (ART) Fatwa," *Science and Engineering Ethics* 24, no. 5 (October 2018): 1493–1502, <https://doi.org/10.1007/s11948-017-9963-6>.

⁴⁴ Akilu Aliyu Shinkafi and Nor Aini Ali, "Contemporary Islamic Economic Studies on *Maqasid Shari'ah*: A Systematic Literature Review," *Humanomics* 33, no. 3 (August 14, 2017): 315–34, <https://doi.org/10.1108/H-03-2017-0041>.

⁴⁵ Nurhadi Nurhadi, "The Importance of Maqāshid Sharia as A Theory in Islamic Economic Business Operations" 3, no. 2 (December 2019): 130–45, <https://doi.org/10.28918/ijibec.v3i2.1635>.

⁴⁶ Nurizal Ismail, *Maqasid Syariah Dalam Ekonomi Islam* (Jakarta: Tazkia Press, 2021).

⁴⁷ Muhammad Shahrul Ifwat Ishak and Fathullah Asni, "The Role of *Maqasid al-Shari'ah* in Applying *Fiqh Muamalat* into Modern Islamic Banking in Malaysia," *Journal of Islamic Accounting and Business Research* 11, no. 9 (November 9, 2020): 2137–54, <https://doi.org/10.1108/JIABR-12-2019-0224>.

strengthen economic development programs through the determination of zakat and waqf.

Citing research by Arshad et al., (2018) that Maqāshid waqf includes all social benefits or goodness and does not limit actions with any good intentions. In this study, it was proven that waqf is a potential mechanism that can stimulate the community's socio-economic development.⁴⁸ Meanwhile, the commandment about zakat has a purpose or meaning to meet the needs of the community, especially Muslims and support empowerment in Islam. As for another purpose, it is prescribed that worship can mean *illat*, which is something that cannot be reasoned by humans because in essence worship is the work of *ghoiru ma'qul fil ma'na*, meaning that the meaning or purpose cannot be understood.⁴⁹

Another fundamental problem in socio-economics is inequality. One of the primary goals of Maqāshid sharia is to achieve justice in the exchange between commodities, distribution of wealth and business justice.⁵⁰ Tarigan (2008) mentions a case when 'Umar bin Khaththāb became caliph. At that time Abdurahmān bin 'Auf, Zubair bin Awām and Bilāl bin Rabbah asked 'Umar to distribute the spoils of war. This request has been based on the Qur`ān Surah al-Anfāl verse 41. However, Umar decided not to distribute the looted land but the land was left to be managed by the owner. Umar's Ijtihad was supported by Utsman bin Affan and Ali bin Abi Thalib with the argument of the Qur`ān al-Hasyr verses 7-10. This verse contains benefits that favor the poor and does not want wealth to only circulate among the rich.⁵¹

⁴⁸ Roshayani Arshad et al., "Modelling Maqasid Waqf Performance Measures in Waqf Institutions," *Global Journal Al Thaqafah* 8, no. 1 (2018): 157-69, <https://doi.org/10.7187/GJATS2018-11>.

⁴⁹ Ahmad Yunadi, "Maqasid as-Syari'ah dan Asuransi Syari'ah" X, no. 2 (December 2020): 159-72.

⁵⁰ Ismail, *Maqasid Syariah Dalam Ekonomi Islam*.

⁵¹ Azhari Akmal Tarigan, "UMAR IBN AL-KHATHTHĀB DAN," no. 1 (2008): 21.

From the looted land case that occurred in Umar's era, Auda said that Umar understood the objectives (Maqāshid) of sharia contained in the Qur`ān. The Maqāshid sharia reduces the difference in distance (disparity) between economic levels. Likewise with the decision to withdraw zakat from horses owned by Muslims, even though no evidence or hadith includes horses as part of the property that must be zakated. But Umar's reason was that the Horse became something more valuable and valuable than the Camel. Although Ibn Hazm rejects horses as a commodity that must be zakated, Qaradhawi rejects the classical opinion, because according to him zakat is obligatory for wealth that continues to grow. Meanwhile, the purpose of zakat is to help the poor and provide public services. The case above illustrates the Maqāshid sharia concept in the economic context.⁵²

From the discussion above, it can be concluded temporarily that Maqāshid sharia can encourage Islam's goals, intentions, values, and spirit to be instilled into practice. It is certainly more profitable than overemphasizing the technical or legal aspects. With Maqāshid sharia, efforts to harmonize revelation and reality become clearer. In other words, Maqāshid sharia becomes a guide for sharia experts in considering changing times that demand changes in human habits and needs in social, economic and political contexts before setting any rules or fatwas.⁵³

Sharia Supervision in Financial Institutions

The institution that oversees sharia in LKS is called the Sharia Supervisory Board (*Dewan Pengawas Syariah*, referred to as DPS). DPS has a central role in sharia governance in financial institutions. Because DPS can be a

⁵² Auda, Khan, and Al-Shaikh-Ali.

⁵³ Ishak and Asni, "The Role of *Maqasid al-Shari'ah* in Applying *Fiqh Muamalat* into Modern Islamic Banking in Malaysia."

forum for consultation on LKS performance to achieve company goals.⁵⁴ This condition distinguishes between LKS and conventional. According to Habib, (2018) three environments shape the governance of Islamic banking. (1) Islamic banking established in a Muslim country whose financial regulations are required to comply with Islamic law. (2) Islamic banking is established in both Muslim and non-Muslim countries where the central bank regulations allow for a sharia framework, also known as the dual banking system. (3) Islamic banking established in a non-Muslim country that does not provide regulations or facilities regarding LKS to operate. In the first and second categories, the presence of the DPS is mandatory, but in the third category, the LKS will operate voluntarily, meaning that the DPS in the LKS is not mandatory. However, if there is a DPS, this condition can increase public confidence in LKS.⁵⁵

DPS occupies an essential position in LKS governance. Five points become the important basis for DPS in LKS, namely religious, social, economic, legal, and governance aspects.⁵⁶ (1) Due to the weak understanding of financial management towards sharia rules, the existence of DPS becomes important to explain sharia principles. With this explanation, it is hoped that LKS can operate following sharia principles. Because the work pattern of LKS adopts a conventional that has been well established in operation. (2) From the social aspect, the existence of DPS can eliminate the doubts of stakeholders about LKS activities. With the presence of DPS, all LKS activities have been confirmed by DPS with an opinion

of conformity to sharia. (3) several studies show a relationship between the performance of the sharia supervisory board in providing sharia-compliant products and the profit of LKS. The role of the DPS is to ensure that LKS operations do not exploit the weak that lead to injustice in financial transactions. (4) the legal aspect of sharia supervision depends on the regulator from the country of origin. (5) In the governance structure of sharia banking, DPS occupies a very important position. Because he must oversee bank operations and their products to comply with sharia provisions. The determination of the DPS was also carried out through the *Rapat Umum Pemegang Saham* (RUPS) after the DPS received a recommendation from the Dewan Syariah Nasional (DSN).

The existence of DPS brings several benefits as well as costs to LKS.⁵⁷ With the presence of DPS, sharia experts can control performance, including contracts that are LKS products. The control aims to ensure that everything does not conflict with sharia principles.⁵⁸ The supervisory report on the implementation of sharia principles carried out by DPS is submitted semi-annually to Bank Indonesia. The supervisory report is usually carried out no later than August for the first semester and February for the second semester.

The report discloses the management's performance evaluation results and the distribution of net income between shareholders and investment account holders. This type of control ensures the legitimacy of the profits generated and increases stakeholder

⁵⁴ Bashar H Malkawi, "Shari'ah Board in the Governance Structure of Islamic Financial Institutions" 61 (2013): 539–78, <https://doi.org/DOI> <http://dx.doi.org/10.5131/AJCL.2013.0003>.

⁵⁵ Syeda Fahmida Habib, *Fundamentals of Islamic Finance and Banking* (United Kingdom: Wiley, 2018).

⁵⁶ Nathan Garas and Pierce, "Shari'a Supervision of Islamic Financial Institutions."

⁵⁷ Nurfarahin M Haridan, Ahmad FS Hassan, and Yusuf Karbhari, "Governance, Religious Assurance and Islamic Banks: Do Shariah Boards Effectively Serve?," *Journal of Management and Governance* 22, no. 4 (April 16, 2018): 1015–43, <https://doi.org/10.1007/s10997-018-9418-8>.

⁵⁸ Nun Harrieti, "The Use of Hybrid Contract in the Innovation of Islamic Banking Product," *Hasanuddin Law Review* 4, no. 1 (April 14, 2018): 68, <https://doi.org/10.20956/halrev.v4i1.1208>.

confidence in LKS activities by providing transparent services.

In addition to producing sharia supervision reports, sharia experts can also provide workshops and lectures to directors and management especially those related to fatwas or new regulations from financial authorities. Sharia experts can contribute by providing suggestions, so that the regulations or fatwas can be implemented in the work program of the LKS. Likewise with the calculation of zakat and the use of non-halal funds in social activities. The role of this DPS will improve management performance.⁵⁹

Based on other studies, the existence of DPS also has costs or conflicts as revealed in Nathan Garas' research (2012). In summary, the conflicts caused by the DPS are written by Habib (2018) as follows: (1) conflicts between DPS members; (2) conflict between DPS and the Board of Directors and (3) conflict between DPS and management.⁶⁰

This condition finally motivated Baklouti to examine the role of sharia supervisors in sharia banking.⁶¹ This study is an empirical study of the impact of DPS characteristics on the financial performance of Islamic banking. By using 42 Islamic banks in the Middle East and North Africa during 2011 to 2018, the study results show that the characteristics of DPS have an impact on the performance of Islamic banking. The results of other studies also confirm that the size of the DPS and the number of meetings between the DPS can improve banking performance.

In carrying out their duties as DPS members, DPS members are required to have

certain criteria. *Accounting and Auditing Organization for Islamic Financial Institutions*, referred to as (AAOIFI) provides standards regarding the organization in Islamic financial institutions of at least three DPS members, but LKS has two, three, four or even more⁶². As previous research shows that the number of DPS has an impact on the performance of Islamic banking.

In addition to the number criteria, DPS also has a significant factor in influencing the performance of Islamic banking, namely competence. Competence implies the persistence and ability of members to carry out their roles according to the required qualifications and experience.⁶³

A study on DPS was also carried out by Alsartawi which discussed the relationship between DPS independence and sharia banking performance. According to him, the independence of DPS is very important to build stakeholder trust in Islamic banking in terms of compliance with sharia rules. For this reason, AAOIFI considers the independence of DPS from the board of directors so that DPS is free to fulfill its obligations.⁶⁴

CONCLUSION

This article has explored mu'āmalah fiqh in Islamic economics both in theory and practice. In particular, this study highlights the prohibition of mu'āmalah fiqh in Islamic economics such as usury and gharār. The two

⁵⁹ Nathan Garas and Pierce, "Shari'a Supervision of Islamic Financial Institutions."

⁶⁰ Habib, *Fundamentals of Islamic Finance and Banking*.

⁶¹ Ibtissem Baklouti, "Is the Sharia Supervisory Board a Friend or an Enemy of Islamic Banks?," *Journal of Islamic Marketing* ahead-of-print, no. ahead-of-print (October 19, 2020), <https://doi.org/10.1108/JIMA-04-2020-0118>.

⁶² Céline Meslier, Tastaftiyan Risfandy, and Amine Tarazi, "Islamic Banks' Equity Financing, Shariah Supervisory Board, and Banking Environments," *Pacific-Basin Finance Journal* 62 (September 2020): 101354, <https://doi.org/10.1016/j.pacfin.2020.101354>.

⁶³ Karim Ginena and Azhar Hamid, *Foundation of Shari'ah Governance of Islamic Banks* (United Kingdom: John Wiley and Sons, 2015).

⁶⁴ Abdalmuttaleb Musleh Alsartawi, "Performance of Islamic Banks: Do the Frequency of Shari'ah Supervisory Board Meetings and Independence Matter?," *ISRA International Journal of Islamic Finance* 11, no. 2 (December 9, 2019): 303–21, <https://doi.org/10.1108/IJIF-05-2018-0054>.

prohibitions in essence have great but invisible dangers. To avoid the dangers of usury and gharār, then formulated rules in fatwas and laws. However, the complexity of the modern financial system gives rise to various problems. It forces the rules to be more flexible. For that we need a new framework that can solve these problems. Several researchers offer a new framework through Maqāshid sharia which is believed to provide an antidote or solution for current Islamic finance. With the presence of Maqāshid sharia, sharia finance stakeholders no longer need to be clashed with rigid rules that weaken economic innovation, especially in the field of sharia finance.

Although this article is limited, it still has a significant contribution in three aspects. First, it clarifies the prohibition of fiqh mu'āmalah and multi-contracts, secondly connecting it with sharia Maqāshid so that existing regulations do not hinder sharia financial activities, thirdly through regulations in sharia finance, LKS still needs supervisors competent and professional and experienced.

This article can still be developed in contemporary mu'āmalah fiqh, especially regarding contracts in Islamic financial institutions. For this reason, the authors hope that further research can expand and widen the study into the scope of the contract or contract which is the spearhead of Islamic financial activity in society.

This article concludes several recommendations that: *first*, The prohibition of usury and gharār needs to be conveyed to all elements of Muslim society. Considering the

complexity of the topic of usury is more complicated than gharār plus the punishment of usury is much heavier, it requires in-depth methods and studies so that the issue of usury becomes more easily understood by the Muslim community. *Second*, Maqāshid sharia should not be applied to prohibit problems with definite provisions. Instead, Maqāshid Syariah provides a pragmatic solution that fiqh mu'āmalah can be implemented in Islamic economic and financial activities. *Third*, Fiqh mu'āmalah is the basic material in Islamic economic activities, so studying mu'āmalah fiqh is highly recommended to build a better Islamic economy and finance.

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