



THE ROLE OF MAQASHIDUS SHARI'AH THEORY IN THE FORMATION OF ISLAMIC INSURANCE LEGAL FATWA

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Abstract :

This study examines the pivotal role of Maqashidus Shari'ah theory in shaping legal fatwas (Islamic legal opinions) for Islamic insurance (takaful) products and practices. Through a comprehensive analysis of contemporary fatwa-making processes, this research investigates how the five fundamental objectives of Islamic law preservation of life (hifz al-nafs), intellect (hifz al-aql), lineage (hifz al-nasl), wealth (hifz al-mal), and religion (hifz al-din) serve as guiding principles in determining the Shari'ah compliance of insurance mechanisms. The study employs a qualitative methodology, analyzing fatwa documents from major Islamic jurisprudence councils and examining theoretical frameworks established by contemporary Islamic scholars. Findings reveal that Maqashidus Shari'ah theory provides a robust foundation for addressing modern financial challenges while maintaining Islamic ethical principles. The research demonstrates that fatwas on Islamic insurance consistently reference maqashid principles to justify risk-sharing mechanisms, mutual cooperation (ta'awun), and the elimination of prohibited elements such as gharar (excessive uncertainty), riba (usury), and maysir (gambling). This study contributes to the growing body of literature on Islamic finance jurisprudence and offers practical insights for Islamic financial institutions, regulatory bodies, and scholars engaged in contemporary ijtihad (independent reasoning).

Keywords: Maqashidus Shari'ah, Islamic Insurance, Fatwa

Abstrak :

Penelitian ini mengkaji peran penting teori Maqashidus Shari'ah dalam membentuk fatwa hukum (pendapat hukum Islam) untuk produk dan praktik asuransi Islam (takaful). Melalui analisis komprehensif terhadap proses penetapan fatwa kontemporer, penelitian ini menyelidiki bagaimana lima tujuan fundamental hukum Islam pemeliharaan jiwa (hifz al-nafs), akal (hifz al-aql), keturunan (hifz al-nasl), harta (hifz al-mal), dan agama (hifz al-din) berfungsi sebagai prinsip panduan dalam menentukan kepatuhan Shari'ah dari mekanisme asuransi. Studi ini menggunakan metodologi kualitatif, menganalisis dokumen fatwa dari dewan-dewan fikih Islam utama dan mengkaji kerangka teoretis yang dikembangkan oleh ulama Islam kontemporer. Temuan penelitian mengungkapkan bahwa teori Maqashidus Shari'ah menyediakan landasan yang kuat untuk mengatasi tantangan keuangan modern sambil mempertahankan prinsip-prinsip etika Islam. Penelitian menunjukkan bahwa fatwa-fatwa tentang asuransi Islam secara konsisten merujuk pada prinsip-prinsip maqashid untuk membenarkan mekanisme pembagian risiko, kerjasama timbal balik (ta'awun), dan peniadaan unsur-unsur yang dilarang seperti gharar (ketidakpastian berlebihan), riba (renten), dan maysir (perjudian). Studi ini berkontribusi pada khasanah literatur yang berkembang tentang yurisprudensi keuangan Islam dan menawarkan wawasan praktis bagi lembaga keuangan Islam, badan regulasi, dan ulama yang terlibat dalam ijtihad (penalaran independen) kontemporer.

Kata kunci: Maqashidus Shari'ah, Asuransi Islam, Fatwa



INTRODUCTION

Islamic insurance, known as *takaful*, has emerged as a significant financial instrument within the broader Islamic finance ecosystem, representing a Shari'ah-compliant alternative to conventional insurance practices. The development of *takaful* products and services requires careful jurisprudential examination to ensure compliance with Islamic law principles, a process that fundamentally relies on the issuance of fatwas by qualified Islamic scholars and jurisprudence councils (Abdullah & Rahman, 2023). These legal opinions serve as authoritative guidance for financial institutions, regulators, and consumers seeking to engage with Islamic insurance products while maintaining religious compliance.

The theoretical foundation underlying contemporary fatwa formation in Islamic insurance increasingly draws upon *Maqashidus Shari'ah* theory, which identifies the five essential objectives that Islamic law seeks to protect and promote. The Quran emphasizes the importance of mutual cooperation and protection of community interests, stating: "And cooperate in righteousness and piety, but do not cooperate in sin and aggression" (Al-Quran, 5:2). This divine guidance establishes the fundamental principle of *ta'awun* (mutual cooperation) that underlies modern *takaful* operations (Al-Dhareer, 2022). Additionally, the Prophet Muhammad (peace be upon him) emphasized the concept of mutual responsibility within the Muslim community, declaring: "The believers in their mutual kindness, compassion, and sympathy are just one body; when a limb suffers, the whole body responds to it with wakefulness and fever" (Sahih al-Bukhari, Hadith 6011). This prophetic tradition provides the religious foundation for risk-sharing mechanisms that characterize Islamic insurance products.

Contemporary Islamic scholars have recognized that traditional jurisprudential approaches, while essential, require supplementation with *maqashid*-based reasoning to address the complexity of modern financial instruments (Al-Ghazali, 2021). The five fundamental objectives of Islamic law preservation of life (*hifz al-nafs*), intellect (*hifz al-aql*), lineage (*hifz al-nasl*), wealth (*hifz al-mal*), and religion (*hifz al-din*) provide a comprehensive framework for evaluating the permissibility and desirability of insurance mechanisms (Laldin & Furqani, 2022).

The preservation of life (*hifz al-nafs*) principle supports insurance products that protect individuals and families from financial hardship resulting from death, disability, or illness. The Quran declares: "And whoever saves a life, it is as if he has saved all of mankind" (Al-Quran, 5:32), establishing the religious imperative for protective mechanisms that preserve human welfare (Ibrahim & Jusoh, 2023). Similarly, the preservation of wealth (*hifz al-mal*) objective justifies risk-sharing arrangements that protect economic resources from unexpected losses, while the preservation of lineage (*hifz al-nasl*) supports family protection products that ensure continuity of support for dependents (Al-Suwailem, 2023).

However, the application of maqashid principles to Islamic insurance is not without challenges. Scholars must carefully balance the achievement of maqashid objectives with the avoidance of prohibited elements such as gharar (excessive uncertainty), riba (interest), and maysir (gambling) that are explicitly forbidden in conventional insurance practices (Hasan & Abdullah, 2022). The Quran prohibits both riba and gambling, stating: "Allah has permitted trade and has forbidden riba" (Al-Quran, 2:275) and "O you who believe! Intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it" (Al-Quran, 5:90). These prohibitions require Islamic insurance scholars to develop alternative structures that achieve protective benefits through permissible means.

The complexity of modern financial markets and the emergence of innovative insurance products have prompted Islamic jurisprudence councils worldwide to develop sophisticated fatwa-making processes that systematically incorporate maqashid analysis (Mohd Nor & Ibrahim, 2023). These processes typically involve detailed examination of product structures, risk distribution mechanisms, and operational procedures to ensure alignment with both specific Shari'ah rules and broader maqashid objectives (Rahman & Hassan, 2022).

Despite the growing importance of maqashid-based reasoning in Islamic insurance jurisprudence, limited systematic research has examined how these principles influence contemporary fatwa formation processes. Existing literature primarily focuses on either theoretical expositions of maqashid principles or descriptive analyses of specific insurance products, with insufficient attention to the practical application of maqashid theory in jurisprudential decision-making (Yousef, 2023).

This research addresses this gap by providing a comprehensive analysis of how Maqashidus Shari'ah theory shapes contemporary fatwas on Islamic insurance products and practices. The study examines fatwa documents from major Islamic jurisprudence councils to identify patterns in maqashid application and analyze the theoretical frameworks employed by contemporary scholars in addressing insurance-related questions.

The significance of this research extends beyond academic inquiry to practical implications for the Islamic finance industry. As takaful markets continue to expand globally, with industry assets reaching over \$50 billion worldwide, the need for consistent and theoretically grounded jurisprudential guidance becomes increasingly critical (Ahmad & Haron, 2022). Financial institutions require clear understanding of how maqashid principles influence product development, regulatory compliance, and market positioning strategies.

Furthermore, the diversity of jurisprudential approaches across different Islamic jurisdictions has created challenges for multinational takaful operators seeking to standardize products and services while maintaining local Shari'ah compliance (Al-Amine, 2023). Some scholars emphasize literal textual compliance with classical jurisprudence, while others advocate for more flexible

maqashid-based interpretations that accommodate contemporary financial realities. This methodological divergence has resulted in varying fatwa conclusions for similar insurance products across different markets.

The research also addresses the evolving role of *ijtihad* (independent reasoning) in contemporary Islamic jurisprudence, particularly as it relates to financial innovation. The Prophet Muhammad (peace be upon him) encouraged reasoned analysis, stating: "When a judge makes an independent judgment (*ijtihad*) and is correct, he receives two rewards; when he makes an independent judgment and is wrong, he receives one reward" (Sahih al-Bukhari, Hadith 7352). This prophetic guidance establishes the legitimacy and necessity of scholarly reasoning in addressing novel circumstances (Hassan & Ali, 2022).

Modern scholars face the challenge of applying classical jurisprudential principles to unprecedented financial structures and market conditions. The emergence of parametric insurance, microinsurance, and digital insurance platforms requires sophisticated analysis that goes beyond traditional analogical reasoning (*qiyas*) to encompass maqashid-based evaluation of purposes, outcomes, and social welfare implications (Al-Bashir & Ahmad, 2023).

The integration of maqashid theory into Islamic insurance jurisprudence also reflects broader trends in contemporary Islamic legal methodology. Leading Islamic scholars have increasingly emphasized the importance of understanding the underlying purposes and wisdom behind specific religious commandments, arguing that rigid adherence to formal rules without consideration of their intended objectives may sometimes contradict the spirit of Islamic law (Ibn Ashur, 2021).

This methodological shift has particular relevance for financial transactions, where rapid technological advancement and market evolution create circumstances that were inconceivable during the classical period of Islamic jurisprudence. The application of maqashid principles enables scholars to evaluate new financial instruments based on their compliance with fundamental Islamic values and their contribution to human welfare, rather than relying solely on formal analogies to traditional contracts (Al-Raysuni, 2022).

The study's theoretical contribution lies in developing a systematic framework for understanding how maqashid principles function within contemporary fatwa-making processes. By analyzing actual fatwa documents rather than theoretical treatises, the research provides empirical evidence of how scholars practically apply maqashid reasoning to resolve complex jurisprudential questions in Islamic insurance.

The practical significance of this research extends to multiple stakeholders within the Islamic finance ecosystem. For product development teams, understanding maqashid-based evaluation criteria can inform the design of innovative insurance solutions that proactively address jurisprudential concerns. For regulatory authorities, insights into scholarly reasoning processes

can enhance supervision frameworks and promote consistent application of Shari'ah compliance standards across institutions.

RESEARCH METHOD

This study employs a qualitative research methodology combining document analysis, content analysis, and comparative jurisprudential analysis. The research design is structured around three primary components: theoretical framework analysis, fatwa document examination, and comparative case study analysis.

Data Collection, primary data sources include fatwa documents issued by major Islamic jurisprudence councils, including the Islamic Fiqh Academy of the Organization of Islamic Cooperation (OIC), the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI), the National Sharia Board of Indonesia (DSN-MUI), the Sharia Advisory Council of Bank Negara Malaysia, and the UAE Higher Sharia Authority. Secondary sources comprise academic publications, scholarly analyses, and theoretical works on Maqashidus Shari'ah and Islamic insurance.

Analytical Framework, the analytical framework is structured around the five fundamental objectives of Maqashidus Shari'ah, examining how each objective influences fatwa formation in Islamic insurance contexts. The analysis employs both deductive and inductive approaches, beginning with established maqashid principles and examining their application in specific fatwa contexts while remaining open to emerging patterns and themes.

Validation and Reliability, to ensure validity and reliability, this study employs triangulation through multiple data sources and analytical perspectives. Expert validation is conducted through consultation with Islamic finance scholars and industry practitioners. The research maintains objectivity through systematic documentation of analytical processes and transparent presentation of findings.

FINDINGS AND DISCUSSION

Descriptive 1 : Theoretical Foundation of Maqashidus Shari'ah in Insurance Context, the application of Maqashidus Shari'ah theory to Islamic insurance reveals a sophisticated integration of classical Islamic legal principles with contemporary financial mechanisms. Analysis of fatwa documents demonstrates that Islamic scholars consistently reference maqashid objectives when evaluating insurance proposals, with particular emphasis on the preservation of wealth (hifz al-mal) and life (hifz al-nafs).

The preservation of wealth emerges as the primary maqashid objective in Islamic insurance fatwas, with scholars arguing that legitimate insurance mechanisms protect participants' financial interests through risk distribution and mutual cooperation. This principle is frequently invoked to justify the acceptability of premium payments and claim settlements within Shari'ah-compliant frameworks.

Descriptive 2 : Maqashid-Based Justification for Risk-Sharing Mechanisms

Contemporary fatwas demonstrate sophisticated application of maqashid principles to justify risk-sharing mechanisms that were unknown to classical Islamic scholars. The concept of ta'awun (mutual cooperation) is consistently linked to the maqashid objective of preserving community welfare, with scholars arguing that insurance pools represent legitimate manifestations of Islamic social solidarity principles.

Maqashid Objective	Application in Islamic Insurance	Fatwa References
Preservation of Life (Hifz al-Nafs)	Justification for health insurance, family protection	DSN-MUI 21/2001, AAOIFI FAS 12
Preservation of Wealth (Hifz al-Mal)	Risk distribution, asset protection, economic stability	OIC IFA Resolution 9/3, BNM Guidelines
Preservation of Religion (Hifz al-Din)	Ensuring Shari'ah compliance, avoiding prohibited elements	UAE HSA Decision 2019/4
Preservation of Intellect (Hifz al-Aql)	Education insurance, professional development coverage	Malaysian Takaful Act 1984
Preservation of Lineage (Hifz al-Nasl)	Family takaful, inheritance protection	AAOIFI Shari'ah Standard 12

Table 1: Maqashid Objectives and Their Application in Islamic Insurance Fatwas

Descriptive 3 : Elimination of Prohibited Elements Through Maqashid Application

The systematic application of maqashid principles has enabled Islamic scholars to develop sophisticated mechanisms for eliminating prohibited elements (gharar, riba, maysir) from insurance contracts while maintaining their essential protective functions. This process demonstrates the flexibility and adaptability of Islamic law when guided by clear objectives.

Fatwas consistently emphasize that while conventional insurance may contain prohibited elements, properly structured takaful arrangements aligned with maqashid objectives can achieve the same protective benefits through Shari'ah-compliant means. This represents a significant development in Islamic jurisprudence, showing how maqashid theory enables positive engagement with modern financial innovations.

Descriptive 4 : Contemporary Challenges and Maqashid-Based Solutions Recent developments in insurance technology, including parametric

insurance and blockchain-based solutions, have presented new challenges for Islamic insurance fatwa formation. Analysis reveals that scholars increasingly rely on maqashid principles to evaluate these innovations, focusing on whether they serve the fundamental objectives of Islamic law rather than strictly adhering to classical contract forms.

Descriptive 5 : Comparative Analysis of Fatwa Approaches Across Different Jurisdictions

The examination of fatwas from various Islamic jurisprudence councils reveals both convergence and divergence in the application of Maqashidus Shari'ah principles. Malaysian and Indonesian councils tend to emphasize the preservation of wealth (hifz al-mal) as the primary justification for Islamic insurance, while Middle Eastern councils place greater emphasis on the preservation of life (hifz al-nafs) and community welfare aspects.

The analysis indicates that cultural and economic contexts significantly influence how maqashid principles are interpreted and applied. For instance, the National Sharia Board of Indonesia (DSN-MUI) frequently references the concept of maslaha (public interest) derived from maqashid theory when approving innovative takaful products, while Gulf Cooperation Council (GCC) countries' fatwa bodies tend to adopt more conservative interpretations focusing on risk avoidance.

Region	Primary Maqashid Focus	Characteristic Approaches	Key Fatwas
Southeast Asia	Hifz al-Mal (Wealth Preservation)	Emphasis on economic development and financial inclusion	DSN-MUI 21/2001, 53/2006
Middle East	Hifz al-Nafs (Life Preservation)	Focus on family protection and social security	UAE HSA 2019/4, Kuwait FA 2018/12
South Asia	Ta'awun (Mutual Cooperation)	Community-based insurance models	IIBI Pakistan 2020/3
Europe/North America	Maslaha (Public Interest)	Integration with conventional regulatory frameworks	ECFR 2021/8, ISNA 2019/15

Table.2 Regional Variations in Maqashid Application

Descriptive 6 : Evolution of Maqashid-Based Reasoning in Digital Insurance

The emergence of InsurTech and digital insurance platforms has prompted Islamic scholars to develop new applications of maqashid principles. Contemporary fatwas increasingly address artificial intelligence-driven risk assessment, blockchain-based claims processing, and parametric insurance triggers through the lens of maqashid objectives.

Scholars have identified that digital insurance technologies can potentially enhance the achievement of maqashid objectives by improving transparency (supporting hifz al-mal), reducing administrative costs (promoting economic justice), and expanding access to protection (advancing maslaha). However, concerns about algorithmic bias and data privacy have led to nuanced fatwa positions that balance innovation with ethical considerations.

Descriptive 7 : Challenges in Maqashid Application

Despite the theoretical sophistication of Maqashidus Shari'ah, its application to Islamic insurance fatwa formation faces several challenges. The research identifies three primary areas of difficulty: definitional ambiguity, prioritization conflicts, and implementation complexity.

Definitional ambiguity arises when scholars must determine whether specific insurance mechanisms genuinely serve maqashid objectives or merely appear to do so. For example, debates continue regarding whether investment-linked takaful products truly preserve wealth or primarily serve commercial interests.

Prioritization conflicts occur when different maqashid objectives appear to contradict each other. The research reveals instances where preserving individual wealth (through insurance payouts) conflicts with preserving community resources (through premium pools), requiring scholars to develop sophisticated balancing mechanisms.

CONCLUSION

This study demonstrates that Maqashidus Shari'ah theory plays a fundamental and increasingly sophisticated role in the formation of Islamic insurance fatwas. The analysis reveals that contemporary Islamic scholars have successfully adapted classical maqashid principles to address modern insurance challenges while maintaining essential Shari'ah compliance requirements.

The research establishes four key conclusions. First, maqashid principles provide a robust theoretical framework that enables Islamic scholars to engage positively with insurance innovations while preserving Islamic ethical foundations. Second, the application of maqashid theory has facilitated the development of sophisticated risk-sharing mechanisms that achieve protective benefits through Shari'ah-compliant means. Third, regional variations in maqashid application reflect the adaptability of Islamic law to diverse cultural and economic contexts. Fourth, emerging technologies in the insurance sector continue to benefit from maqashid-based analysis, suggesting the ongoing relevance of this theoretical framework.

The study contributes to Islamic finance literature by providing systematic analysis of how maqashid principles influence contemporary fatwa formation. For practitioners, the research offers insights into the jurisprudential foundations underlying Islamic insurance products, potentially informing product development and regulatory compliance strategies.

Future research should examine the long-term effectiveness of maqashid-

based insurance solutions and explore the potential for developing standardized maqashid evaluation frameworks for emerging financial technologies. Additionally, empirical studies measuring the social and economic impact of maqashid-aligned insurance products would provide valuable validation of theoretical frameworks.

The findings suggest that Maqashidus Shari'ah theory will continue to serve as a crucial bridge between classical Islamic jurisprudence and contemporary financial innovation, enabling the Islamic finance industry to address evolving market needs while maintaining authentic Islamic character.

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