



## MAQASID SHARIA IN TABARRU' CONTRACT LAWS

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### ABSTRACT

*A Research related to maqasid sharia in the tabarru' contract law had to be very seldom. With this research that examines two purposes, including, first, to determine the role of maqasid sharia in Islamic finance. Second, to determine the existence of maqasid sharia in tabarru' contract laws. By using qualitative approach, the data for this study was obtained from relevant books, journals, and other academic materials and supporting documents. The results of this study show that there are many roles of tabarru' contract, first, generally tabarru'at contract is reproduced considering that it contains several benefits. Second, tabarru' contract is issued voluntarily without the slightest doubt because this contract is a good deed and generosity. Third, improving the means of organizing tabarru' contracts according to the wishes of the donors. Fourth that donations should not be used as an excuse to waste other people's money, ranging from the rights of heirs to the debts of people who are in debt. This study will contribute to the literature on maqasid sharia in tabarru' contract laws and Islamic finance.*

**Keywords: Maqasid Sharia; Tabarru'Contract; Islamic Law**

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## INTRODUCTION

Islam has an economic system that is fundamentally different from the current systems. It has roots in the Shari'a that shape the worldview as well as the goals and strategies (*maqasid sharia*). The goals that Islam wants are fundamentally immaterial. This goal is based on Islamic concepts of human happiness (*falah*) and a good life (*hayatan thayyibah*) which emphasizes the aspects of brotherhood (*ukhuwah*), socioeconomic justice, and fulfillment of human spiritual needs. This is due to the belief that mankind has the same position as God's vicegerent on earth and at the same time as His servants, who will not be able to feel happiness and inner peace unless true happiness has been achieved through the fulfillment of material and spiritual needs <sup>1</sup>.

The objectives of the Shari'a contain all that is needed by humans to realize *falah* and *hayatan thayyibah* within the limits of the Sharia <sup>2</sup>. Imam Syatibi explained that there are 5 (five) forms of *maqasid sharia* or can be called *kulliyat al-khamsah* (five general principles). The five *maqasids* are protecting religion, protecting the soul, protecting the mind, protecting property, and protecting offspring <sup>3</sup>. Every behavior that has the aim of fulfilling the five desires is *maslahah* and vice versa every behavior that eliminates the five desires is *mafsadah*. Therefore, all scholars agree that *sharia* was revealed to realize the five desires <sup>4</sup>.

*Maqasid sharia* is a general goal to be achieved by *sharia* and applied in life. *Maqasid sharia* is one of the concepts that have an essential role in studying Islamic legislation. Because of the urgency of the role of *maqasid sharia*, legal theorists define *maqasid sharia* as a science that must be understood by every *mujtahid* who will perform *ijtihad*. The critical explanation in the theory of *Maqasid al-sharia* is to realize the benefit of every human being and avoid harm from them. *Maqasid sharia* is benefits, and benefits are *Maqasid sharia*

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<sup>1</sup> M. Umer Chapra, *Islam Dan Tantangan Ekonomi* (Jakarta: Gema Insani, 2000).

<sup>2</sup> Chapra.

<sup>3</sup> Ahmad Ar-Risuni, *Nazariyyah Al-Maqasid 'Inda Al-Imam Al-Syatibi*, 1995.

<sup>4</sup> Ramadhan Al-Buthi, *Ḍawābiṭ Al-Maṣlaḥah Fī Al-Sharī'ah Al-Islāmiyyah Cet VII* (Beirut: Muaassah ar-risalah, 2000).



. Therefore maqasid sharia are general shari'ah goals and have an important role in conducting the study of Islamic laws <sup>5</sup>.

The practice of maqasid sharia has been implemented since the time of the Prophet Muhammad and his companions. Maqasid sharia continues to be developed by previous scholars such as Imam Ghazali, Imam al Razi, Imam al Amidi, Izzuddin bin, Abd al-Salam, Al Thufi, Ibn al Taimiyyah, Ibn al Qayyim al Jauziyyah, and Imam Syatibi. Imam Syatibi specializes in his discussion of maqasid in the book *al Muwafaqat* is in chapter II. Until now, maqasid sharia has developed into an independent scientific discipline <sup>6</sup>.

Maqasid sharia in ancient times discussed more matters of worship such as the work of al-Tirmidhi al-Hakim "*As-Shalatu wa Maqashiduha*" or the work of al- "Iz bin Abdussalam "*Maqashidu al-Ibadah*". Along with the development of the times, the science of maqasid shari'ah has now finally been widely used as a reference in a problem or contemporary issues. Besides that, Maqasid Sharia should also guide current muamalah issues whose cases are not found in the Al-Quran and Sunnah.

The scholars made a major contribution in implementing maqasid sharia, namely by explaining each law with its maqasid. Among them are At-Tirmidhi al-Hakim, Abu Mansur al-Mathuridi, Al-Qoffal al-Kabir, Abu Bakr al-Abhari, Al-Baqilani. These scholars not only explain every provision and law in the texts of the Qur'an and Al-Hadith but also explain the intent and purpose of Allah. behind the application of the legal provisions. In the following period, scholars began to explain maqasid sharia as a concept. This concept has become the basic foundation of maqasid sharia science which is used as a reference in implementing maqasid sharia . Among the scholars who contributed to this period were Imam al-Haramain, Abu Hamid al-Ghazali, Izzudin bin Abdu Salam and Ibn Taimiyah <sup>7</sup>.

<sup>5</sup> Solahuddin Al-ayubi and Siti Halawatuddu'a, "MAQASID AL-SHARIA IN ISLAMIC FINANCE," *Jurnal Al-Dustur* 4, no. 2 (2021): 197–215.

<sup>6</sup> B Nour, "Sejarah Perkembangan Maqashid Sharia.," Available at: <https://alimprospect.wordpress.com/2013/02/27/maqashid-sejarahperkembangan-maqashidsharia/>, 2013.

<sup>7</sup> Oni Sahroni and Adiwarmar Karim, *Maqasid Bisnis Dan Keuangan Islam* (Depok: Raja Grafindo Persada, 2015).



Contemporary Islamic economics. According to ushul fiqh, knowledge of maqasid sharia is the main thing in ijihad in answering various economic and financial life problems that continue to develop along with the times. The study of maqasid sharia in Islamic economics is an exciting topic. It is becoming a trend in the development of Islamic economics and finance, such as the realization of the Maqasid index in testing the performance of Islamic banks other institutions <sup>8</sup>. Furthermore, maqasid sharia is a means of social control and socio-economy engineering to realize human benefit. More than that, maqasid sharia can provide a philosophical and rational dimension to sharia economic law products born in ijihad activities.

In Islamic economics, there is a peculiarity in answering the problem of allocation and distribution of economic resources, namely the existence of the voluntary sector. This sector is a compliment and a consequence of sharia provisions regarding zakat, infaq, alms, waqf, and *qardul hasan* <sup>9</sup>. Benevolence contract institutions are of two types. The institutions of Islamic obligatory and voluntary charities. Among the different forms and shapes of Islamic charitable institutions include Zakat, Sadaqah al-Fitr, Waqf, *Qard Hasan*, etc. These institutions are predominantly focused on fighting poverty, hunger, malnutrition, and other socio-economic deprivations. In addition, some of these institutions are meant to supply many necessities and essentialities of life <sup>10</sup>.

The Islamic Research Institute (IRTI) in its 2015 annual report pointed out that the scope of Islamic social finance includes institutions that work with the Islamic tradition of financing humanity using instruments such as charity, *sadaqah*, and waqf. It also covers aid-based institutions such as *qard* (interest-free loan) and assurance (kafala), as well as microfinance institutions aimed at reducing poverty. Another instrument, Zakat can also be included to meet the most important needs of the poor, such as food, clothing, and shelter. So that zakat

<sup>8</sup> S Antonio, "Kata Pengantar Buku 'Maqashid Sharia Dalam Ekonomi Islam,'" in *Maqashid Sharia Dalam Ekonomi Islam* (Yogyakarta: Smart WR, 2014).

<sup>9</sup> Ali Sakti, *Analisis Teoritis Ekonomi Islam Jawaban Atas Kekacauan Ekonomi Modern* (Jakarta: Aqsa Publishing, 2007).

<sup>10</sup> H. Kamali, "The Shari'ah Purpose of Wealth Preservation in Contracts and Transaction.," *Islam and Civilizational Renewal* 8, no. 2 (2017): 153–75.



becomes an important factor in alleviating poverty <sup>11</sup><sup>12</sup>. The objective of all the instruments is to enable these unfortunate classes to move to a better level so that they can turn into more productive citizens and make more meaningful contributions to economic life <sup>13</sup>.

The institution of Waqf, for example, is envisaged to ensure the provision of all necessary services that are needed in the functioning of a society. Waqf aims to voluntarily bridge any existing gap in the sufficient supply of public goods. The role of Waqf in providing food, drinkable water, free education, and respectable employment is widely acknowledged throughout the history of the institution. Similarly, the role of Waqf has been significant in infrastructure development as well as in supporting the institutions of peace and justice among the societies <sup>14</sup>.

In comparison to the function of Waqf, the role of *Qard Hasan* (interest-free benevolent loan) and other Shariah-prescribed charities is critical in supporting communities and societies voluntarily. The benevolent character of *Qard Hasan*, for example, facilitates financial help to the deserving entities without encumbering the recipient with the burden of interest. Finally, being obligatory upon the wealthy and privileged annually, the institutions of Zakat and Sadaqah al-Fitr ensure the mandatory redistribution of wealth among the underprivileged and deserving entities on an annual basis <sup>15</sup>.

*Tabarru'* contract is a form of agreement or contract transaction that is non-profit (non-for-profit transaction) so that it cannot be used for commercial or business purposes, but to help each other for good. According to the Regulation of the Minister of Finance Number

<sup>11</sup> (Al-Ayubi & Herindar, 2022);

<sup>12</sup> Al-ayubi et al., 2022)

<sup>13</sup> Ascarya and Ugi Suharto, "Integrated Islamic Social and Commercial Finance to Achieve SDGs," in *Islamic Wealth and the SDGs Global Strategies for Socio-Economic Impact*, ed. Mohd Ma'sum Billah, 1st ed. (Jedah Saudi Arabi: Springer Nature Switzerland AG, 2021), 105–27.

<sup>14</sup> Y. Lev, *Charity, Endowments and Charitable Institutions in Medieval Islam*. (Gainesville, FL, USA: University Press of Florida., 2005).

<sup>15</sup> Mohammad Abdullah, "Shari'ah, Ethical Wealth and SDGs: A Maqasid Perspective," in *Islamic Wealth and the SDGs Global Strategies for Socio-Economic Impact*, ed. Mohd Ma'sum Billah (Jeddah, Saudi Arabia: Springer Nature Switzerland AG, 2021), 69–85.



18/PMK.010/2010 concerning the Application of Basic Principles for the Implementation of an Insurance Business and Reinsurance Business with Sharia Principles, it is stated that the *Tabarru'* contract is a grant contract in the form of granting funds from one Participant to the *Tabarru'* Fund' to help others. Between the Participants, and not for commercial purposes. The party who intends and performs the tabarru contract is not allowed to require any compensation. The reward for the tabarru contract is from Allah, not from humans.

*Tabarru'* funds are funds that are sincere only to get a reward from the pleasure of Allah SWT. Furthermore, tabarru' funds can be used to help anyone who is affected by a disaster. In fact, according to Dr. Yusuf Qardhawi, the *tabarru'* fund is forbidden to be withdrawn because it can be equated with a grant. If the tabarru' funds are used for other purposes, this means violating the contract terms <sup>16</sup>.

The main points of discussion in the *tabarru'* contract are covering the first four forms, grants which include *al-'ariyah, al-qardh*, wills. Second, *'aqid* which includes *al-wakalah, al-hajru*. Third, *al-dain* which includes *al-hawala, al-kafala, al-Rahn, al-shulh, al-ibra'*. Fourth, general which includes waqf, zakat, and alms <sup>17</sup>. Thus, this study has two purposes, including, first, to determine the role of maqasid sharia in Islamic finance. Second, to determine maqasid sharia in *tabarru'* contract laws.

## METHODS

This research used qualitative methods and formal literature review to qualify as library research. The data for this study was obtained from relevant books, journals, and other academic materials and supporting documents. After the materials were collected, they were read and analyzed to obtain the research data. The data were then grouped and compiled according to the research questions. This data is presented in a narrative-descriptive manner using the data analysis

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<sup>16</sup> M. S. Sula, *Asuransi Syari'ah (Life and General): Konsep Dan Sistem Operasional* (Jakarta: Gema Insani Press, 2004).

<sup>17</sup> Jaih Mubarak and Hasanudin, *Fikih Mu'amalah Maliyyah Akad Tabarru'*, ed. Iqbal Triadi Nugraha, 1st ed. (Bandung: Simbiosis Rekatama Media, 2017).



method introduced by Miles and Huberman, namely data reduction, data presentation, and conclusion drawing<sup>18</sup>.

## RESULT AND DISCUSSION

Maqasid sharia is used in determining ijthad. According to Ibn Ashur, there is five basic capital ijthad including:

1. Understanding the text linguistically by looking at the text from the point of view of language by adhering to the rules of language and understanding the arguments that support the text.
2. Looking for texts and arguments that allow for contradictions between the arguments (*ta'arudl al-adillah*) to make sure the text is safe from conflict, or if it is not possible, then one of the two is assigned.
3. Doing qiyas if a problem has not been stated in the Qur'an and al-hadith.
4. Conducting ijthad in determining the law on a certain issue that has not been found before due to the absence of evidence for the existing text or the difficulty of doing qiyas.
5. Accept the text if it is impossible to understand the basis of the shariah of law, or the wisdom behind the sharia is not found.
6. Accept the text as it is if it is not possible to reveal the basis for the stipulation of a certain law and there is no wisdom found in it back to the law.

### Maqasid sharia in Islamic Finance Based on a General Approach

Like the maqasid sharia principle, this system focuses on moral, ethical, social, and religious dimensions to ensure justice and equality for society. Therefore, in general, maqashid sharia in Islamic finance has the objectives of economic, financial, and business stability; ensuring fairness in business and finance; instilling the principle of justice, forming contracts or instruments in obtaining wealth and property;

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<sup>18</sup> M.B. Miles and A. M. Huberman, *Qualitative Data Analysis (a Source Book of New Methods)*. (Beverly Hills: Sage Publications, 1984).



circulation of wealth in the financial system; protection and preservation of wealth; the right to own and acquire wealth; transparency in finance and business; Islamic finance documentation; development of wealth investment, preventing dangers and difficulties in finance and business.

### **Maqasid sharia in Islamic Finance Based on a Special Approach**

In addition to the general approach, maqasid sharia also has a general approach based on a micro point of view relating to certain transactions. Maqasid sharia is highlighted based on different Islamic financial transactions. Related to this, Dr. Ahcene Lahsana then took a maqasid sharia approach by looking at the *maslahah* in considering a transaction, such as maqasid sharia on utilities and work; securities contracts; voluntary contracts; support transaction base; financial; Islamic banking; *takaful*; capital market; stock market; financial planning.

In Islam, every transaction must have a contract. The contract has worldly and hereafter consequences because it is based on Islamic law. The agreement that has been made has a responsibility up to *yaumul qiyamah* (Antonio, 2001), Starting with the existence of *shigah*, which is a form of a statement by forming a contract in Islamic commercial law. In this case, each party will convey their respective willingness to agree and accept the contract. The substance of this agreement is intended because, in Islam, the intention can change the applicable sharia rules.

### **Legal Basis of *Tabarru'* Contract**

In the Qur'an, the word *tabarru'* is not found, however, working together and helping each other is stated in the word of Allah: Q.S. Al-Maidah: 2. Meaning: *and help you in doing good and piety, and do not help in committing sins and transgressions. And fear Allah, verily Allah is severe in punishment.*" (Q.S. Al-Maidah: 2)

In the *tabarru'* "grant" contract, someone gives a grant that will be used to help other people who are affected by the disaster. Donating part of one's property to help someone in the face of trouble is highly



recommended in Islam. In the view of Islam described in a narration, namely:

Meaning: "*From Nu'man bin Basyir ra, Rasulullah SAW said, The parable of the Muslim brotherhood in love and affection between them is like one body. When one part of the body feels pain, it will be felt by other parts of the body, such as when you can't sleep or when you have a fever.*" (HR. Muslim).

### Types of *Tabarru'* Contracts

There are 3 (three) forms of *tabarru'* contracts, including the following:

#### 1. Lending Money

Lending money is a *tabarru'* contract because it is not permissible to overpay the loan we provide. After all, any excess without *'iwad* is usury. There are at least 3 (three) forms of *tabarru* contracts, as follows:

- a. Qardh is a loan that is given without requiring anything other than returning the loan after a certain period.
- b. Rahn is a loan that requires a guarantee in a particular form or amount.
- c. Hiwalah is a form of loan by taking over receivables from other parties.

#### 2. Lend services

Lending services in the form of expertise or skills, including *tabarru'* contracts. There are 3 (three) types of loans, namely as follows:

- a. *Wakalah*: providing a loan in the form of our current ability to do something on behalf of another person. In this concept, what we do is only on behalf of that person.
- b. *Wadi'ah*: is a derivative form of *wakalah* contract, wherein this contract has been detailed/detailed about the type of maintenance and care. So that during the provision of services, they also act as representatives of the owner of the goods.
- c. *Kafala* is also a derivative form of the *wakalah* contract, which occurs on conditional *wakalah*.



### 3. Give something

In this contract, the actor gives something to another person. There are at least 2 (two) forms of this contract.

- a. Waqf is the giving and use of such gifts for the public and religious interests, and the gift cannot be given transferable.
- b. Hibah/charity is giving something voluntarily to others <sup>19</sup>.

Maqasid sharia is a general sharia objective and has a vital role in studying Islamic legislation. Maqasid sharia in Islamic finance bring justice and welfare to society and realizes the continuity of human life on this earth <sup>20</sup>.

The general purpose of financial transactions in Islamic law, as explained by Ibn' Ashur (w.1973), identifies five maqasid, firstly, wealth circulation (*rawaj or tadawul*), secondly, transparency (*wuduh*), third, preservation (*hifdz*), fourth, strength endurance and sustainability (*tsabat*), and fifth, equity (*'adl*). Other objectives include the transfer of ownership (fairly), the building of civilization (*'imarah al-'ard / umran*), and the acquisition of wealth in a lawful manner (*kasb*) <sup>21</sup>.

The role of maqasid sharia in Islamic finance is as follows: *first*, to determine the parameters of benefits and harms, *second*, to understand the various levels, objectives of sharia, priorities and categories, *third*, examine the relationship between the two types of maqasid in which maqasid Muamallah must obey the maqasid of law givers to ensure consistency and sharia compliance in human activities, *fourth*, provide facilities for the muamalah legal reasoning process to be carried out, *fifth*, the reasoning that is carried out becomes a gateway analogy where sharia decisions can be extended to other cases based on the cause, *sixth*, as a parameter in assessing the hadith of ahad, *seventh*, as a general guideline and parameter for issuing appropriate resolutions for scholars in conducting ijihad, *eighth*, to determine the meaning of the provisions of the Qur'an and Sunnah, *ninth*, a strong

<sup>19</sup> Mubarak and Hasanudin, *Fikih Mu'amalah Maliyyah Akad Tabarru'*.

<sup>20</sup> Al-ayubi and Halawatuddu'a, "MAQASID AL-SHARIA IN ISLAMIC FINANCE."

<sup>21</sup> Tawfique Al-mubarak, "The Maqasid of Zakah and Awqaf and Their Roles in Inclusive Finance," *Islam and Civilisational Renewal IAIS Malaysia* 7, no. 2 (2016): 217–30.



relationship between maqasid sharia, The principles of fiqh, and the rules of Islamic jurisprudence make maqasid sharia a macro discipline that links with other disciplines in Islamic science <sup>22</sup>.

In Islamic economic literature, ownership contracts divided into two models, such as:

- a. The transfer of ownership contract is accompanied by exchange and payment. This model is called an exchange and payment contract. This model is called an exchange contract (*'uqud al mu'awadat*);
- b. The transfer of ownership contract is not accompanied by any exchange and payment. Such a model is called a contract virtue (*'uqud al tabarru'at*) <sup>23</sup>.

The *tabarru'* contract is based on sympathy between members of the nation, the *tabarru'* contract also serves the meaning of brotherhood. *Tabarru'* contract is a clear benefit of hajiyat, and the influence of beautiful Islamic morals. Through the *tabarru'* contract, if you can deliver aid to people in need, provide a living for the needy, and uphold the many benefits of Muslims <sup>24</sup>.

#### **The maqasid of *tabarru'at* contracts are:**

*The first maqasid (objective):* So that this *tabarru'at* is reproduced considering that it contains several benefits, both general and specific.

In addition, the stingy nature of the human soul can hinder the many benefits. There is much evidence that encourages *tabarru'*, and makes it a charity whose reward will not be cut off after death. In an authentic hadith, it is said:

وعنه قال: قال رسول الله صلى الله عليه وسلم : "إذا مات ابن آدم انقطع عمله إلا من ثلاث: صدقة جارية أو علم ينتفع به أو ولد صالح يدعو له" ((رواه مسلم)).

Abu Hurairah (May Allah be pleased with him) reported:

<sup>22</sup> Al-ayubi and Halawatuddu'a, "MAQASID AL-SHARIA IN ISLAMIC FINANCE."

<sup>23</sup> Budi Sudrajat, *Dimensi Sosio-Ekonomi Teks Mir'at Al Thullab* (Serang: FTK Banten Press, 2014).

<sup>24</sup> M.A Ashur, *Maqasid Sharia Al-Islamiyah* (Yordania: Daar an-Nafais, 2001).



The Messenger of Allah (ﷺ) said, "When a man dies, his deeds come to an end except for three things: *Sadaqah Jariyah* (ceaseless charity); a knowledge which is beneficial, or a virtuous descendant who prays for him (for the deceased)." [Muslim].

Alms Jariyah and waqf at the time of the Prophet and his companions have been done a lot. Among them is Umar's charity, in which the Messenger of Allah has given a signal to him to issue the treasure as charity. Likewise, Abu Talhah al-Ansari's almsgiving was the order of the Prophet to him, and Uthman's alms with the well of *Rumah*. "Whoever buys a house well and then puts his bucket on it along with the buckets of the Muslims with good from it, then he will be in paradise." So Usman bought it and gave it to the Muslims. Likewise, Sa'ad bin Ubadah gave alms with his garden full of fruit for his dead mother. So, these alms are waqf that can be utilized by the Muslims with clear provisions. So there is no doubt that one of the purposes of the Sharia is to multiply the *tabarru'* contract <sup>25</sup>.

Thus, waqf is a property of Muslims that continues to be sustainable when managed in a trustworthy and good manner, it will be useful for people in various aspects of life in realizing maqasid sharia. The history of Islam above has proven how waqf is a pillar of the development of Islamic civilization <sup>26</sup>. Thus, excess wealth can be spent for the welfare of society in the form of Zakat, charity, and Waqf <sup>27</sup>.

*The second maqсад (objective):* so that this *tabarru'* contract is issued voluntarily without any doubt because this contract is a good deed and generosity because in this contract someone spends some of his beloved property without expecting a reward in exchange for what has been issued.

So the party who performs this contract must purify the intent or purpose, namely to provide comprehensive benefits and abundant rewards. Therefore, among the wisdom of sharia (Allah) in the law of

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<sup>25</sup> Ashur.

<sup>26</sup> Nurizal Ismail, *Maqasid Sharia Dalam Ekonomi Islam* (Jakarta: Tazkia Press, 2021).

<sup>27</sup> A Zaman, "An Islamic Critique of Neoclassical Economics.," *Pakistan Business Review* 14, no. 1 (2012): 9–62.



*tabarru'* contracts is that the parties who are *tabarru'* spend their wealth without being followed by regret until it does not bring harm to those who do good because of their goodness, which makes people afraid to do good. good, because one should not do good deeds with evil, as Allah SWT hints in his word in the letter al-Baqarah 233:

لَا تُضَارُّ وَالِدَهُ بِوَالِدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ ....

"... No mother should be harmed through her child, and no father through his child..." (Q.S. 2: 233)

So the comfort of the soul that is obtained from *tabarru'* is more specific (preferred) than the pleasure of the heart from just a (commercial) exchange contract transaction. This means that the time limit required for this *tabarru'* contract, after being planned and implemented, is wider than the time limit for the implementation of the (commercial) exchange contract.

As we know from the arguments in the sunnah, and the words of the scholars, in an authentic hadith it is stated:

وَعَنْ أَبِي هُرَيْرَةَ قَالَ: قَالَ رَسُولُ اللَّهِ: يَا رَسُولَ اللَّهِ أَيُّ الصَّدَقَةِ أَكْبَرُ قَالَ: " أَنْ تَصَدَّقَ وَأَنْتَ صَاحِبٌ صَحِيحٌ تَخْشَى الْفَقْرَ وَتَأْمَلُ الْغِنَى وَلَا تُؤَهِّلَ حَتَّى إِذَا بَلَغَتِ الْخُلْفُومَ قُلْتَ: لِفُلَانٍ كَذَا وَلِفُلَانٍ كَذَا وَقَدْ كَانَ لِفُلَانٍ "

"Abu Huraira told that when a man asked God's messenger which sadaqa produced the greatest reward he replied, "That which you give when you are healthy and inclined to be mean, fearing poverty and hoping for a competence. Do not put it off and then say when you are about to die that you give such and such to so and so and such and such to so and so when it has already become the property of so and so". (Bukhari and Muslim.)

This situation requires contemplation and determination without hesitation to a narrow point. The time limit for consideration is reached by one of two things, namely possession, and testimony. The requirement for ownership in *tabarru'* is that it must be following this purpose, so that the *tabarru'* contract is invalid except after the



completion of the surrender contract, unlike a (commercial) exchange contract<sup>28</sup>.

Therefore, the occurrence of surrender before death is very important and the surrender made after death is a will. Imam Malik in the book al-Muwaththa of sayyidah Aisyah, as follows:

وَحَدَّثَنِي مَالِكٌ عَنْ ابْنِ شِهَابٍ عَنْ عُرْوَةَ بْنِ الرَّبِيعِ عَنْ عَائِشَةَ زَوْجِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّهَا قَالَتْ إِنَّ أَبَا بَكْرٍ الصِّدِّيقَ كَانَ نَحَلَهَا جَادَّ عِشْرِينَ وَسَقًا مِنْ مَالِهِ بِالْغَابَةِ فَلَمَّا حَضَرَتْهُ الْوَفَاةُ قَالَ وَاللَّهِ يَا بِنْتِي مَا مِنْ النَّاسِ أَحَدٌ أَحَبُّ إِلَيَّ غَيًّا بَعْدِي مِنْكَ وَلَا أَعَزُّ عَلَيَّ فَقَرًا بَعْدِي مِنْكَ وَإِنِّي كُنْتُ نَحَلْتُكَ جَادَّ عِشْرِينَ وَسَقًا فَلَوْ كُنْتُ جَدِّتِيهِ وَاحْتَرْتِيهِ كَانَ لَكَ وَإِنَّمَا هُوَ الْيَوْمَ مَالٌ وَارِثٌ وَإِنَّمَا هُمَا أَحْوَاكِ وَأُحْتَاكِ فَأَقْتَسِمُوهُ عَلَيَّ كِتَابِ اللَّهِ

*Malik related to me from Ibn Shihab from Urwa ibn az-Zubayr that A'isha, the wife of the Prophet, may Allah bless him and grant him peace, said, "Abu Bakr as-Siddiq gave me palm trees whose produce was twenty awsuq from his property at al-Ghaba. When he was dying, he said, 'By Allah, little daughter, there is no one I would prefer to be wealthy after I die than you. There is no one it is more difficult for me to see poor after I die than you. I gave you palm-trees whose produce is twenty awsuq. Had you cut them and taken possession of them, they would have been yours, but today they are the property of the heirs, and they are your two brothers and your two sisters, so divide it according to the Book of Allah.*

As for the testimony of giving, it is the same as surrender in the origin of the implementation, and this is what Malik said which was taken from the hadith of Al-Nu`man bin Bashir in the *sahihain*. Al-Nu`man bin Bashir said:

حَدَّثَنَا حَامِدُ بْنُ عُمَرَ حَدَّثَنَا أَبُو عَوَانَةَ عَنْ خُصَيْنٍ عَنْ عَامِرٍ قَالَ سَمِعْتُ التُّعْمَانَ بْنَ بَشِيرٍ - رَضِيَ اللَّهُ عَنْهَا - وَهُوَ عَلَى الْمِنْبَرِ يَقُولُ أَعْطَانِي أَبِي عَطِيَّةً فَقَالَتْ عَمْرَةُ بِنْتُ رَوَاحَةَ لَا أَرْضَى

<sup>28</sup> Ashur, *Maqasid Sharia Al-Islamiyah*.

حَتَّى تُشْهَدَ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ. فَأَتَى رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ إِنِّي  
أَعْطَيْتُ ابْنِي مِنْ عَمْرَةَ بِنْتِ رَوَاحَةَ عَطِيَّةً فَأَمَرْتَنِي أَنْ أَشْهَدَكَ يَا رَسُولَ اللَّهِ. قَالَ " أَعْطَيْتُ  
سَائِرَ وَلَدِكَ مِثْلَ هَذَا ". قَالَ لَا. قَالَ " فَاتَّقُوا اللَّهَ وَاعْدِلُوا بَيْنَ أَوْلَادِكُمْ ". قَالَ فَرَجَعَ فَرَدَّ  
عَطِيَّتَهُ.

### **Narrated 'Amir:**

I heard An-Nu`man bin Bashir on the pulpit saying, "My father gave me a gift but `Amra bint Rawaha (my mother) said that she would not agree to it unless he made Allah's Messenger (ﷺ) as a witness to it. So, my father went to Allah's Messenger (ﷺ) and said, 'I have given a gift to my son from `Amra bint Rawaha, but she ordered me to make you as a witness to it, O Allah's Messenger (ﷺ)!' Allah's Messenger (ﷺ) asked, 'Have you given (the like of it) to everyone of your sons?' He replied in the negative. Allah's Messenger (ﷺ) said, 'Be afraid of Allah, and be just to your children.' My father then returned and took back his gift."<sup>29</sup>

And this is clear evidence that it is considered invalid before the testimony is given, and clear evidence of the testimony of giving is from their knowledge, so Amrah determined that the testimony was for the Messenger of Allah.

It is known that the donor may be concerned about delays in acquiring wealth, so he deliberately testifies and then follows him in possessing his wealth, so this is sufficient for us in verifying the donation so that the donor becomes a place for what the donor contributed, and he owns it. And he has the right to claim his own according to the Maliki school. Many scholars, including al-Shafi'i and Abu Hanifah, have said that ownership is a condition for the validity of the *tabarru'* contract so that *tabarru'* will not occur if there is no ownership in it. In this case, it is an extension of the doer of good until he joins his word. The followers of the Hanafi school say that it is permissible to return a gift after it has been received by the recipient except in seven forms, and it is of this type.

<sup>29</sup> Ashur.

As for those who say that *tabarru'* is valid only with words, among them are Imam Ahmad bin Hanbal, Abu Tsur, and Dawud Al-Dhahiri, as this is also attributed to Abu Yusuf, one of Imam Abu Hanifah's students, they treat *tabarru'* as they treat other contracts, and leaving the goodness contained that should not be narrowed down only to the owner, thus making others reluctant to do it, because with that there will be the potential for losing some great benefits. I don't think that the return of the gift from the father from his son except because so that they can immediately do *tabarru'* for their children without thinking for reasons of generosity, and he believes that his son's money is his money, so if he regrets giving it, then the Sharia gives breadth to take back the prize. Even so, the rights of parents are maintained because children do not become a barrier for their parents in doing good. The parents here include his mother, as long as his father is alive. A more detailed explanation is in the book of Fiqh.

As this is what we understand that the Sharia is very committed to preventing harm from anyone who wants to do good so as not to feel burdened by his goodness, with the aim of humans not being afraid to do good.

*The third maqsad (objective)* is to increase the means of organizing *tabarru* contracts according to the wishes of the donors.

The purpose of this goal is usually if *tabarru'* has to be with wealth, it is heavy for everyone. Then it is permissible to share 'with another. Because *tabarru'* is the spiritual attitude of someone who is so noble and based on noble morals, although it does not guarantee that someone is free from miserliness. The act of being stingy is very dangerous, and the most severe danger is that which Allah (SWT) has mentioned in His word:

الشَّيْطَانُ يَعِدُكُمُ الْفَقْرَ وَيَأْمُرُكُم بِالْفَحْشَاءِ ۗ وَاللَّهُ يَعِدُكُم مَّغْفِرَةً مِّنْهُ وَفَضْلًا ۗ وَاللَّهُ وَاسِعٌ عَلِيمٌ

*“Satan threatens you with poverty and orders you to immorality, while Allah promises you forgiveness from Him and bounty. And Allah is all-Encompassing and Knowing”.* (Q.S. 2: 268)



And the religious advice to be patient is as stated in the first maqsad (goal). All forms of breadth in carrying out various ways of tabarru' are to fulfill the first goal<sup>30</sup>.

Thus, waqf-based Islamic financial institutions can also be established to alleviate poverty by providing interest-free loans funded by Waqf capital<sup>31</sup>.

*The fourth maqsad (objective):* That donations should not be used as an excuse to waste other people's money, from the rights of the heirs to the debts of the people who are in debt. In the past, the issue of the will was like a problem in inheritance, and because of that, they were more inclined to prevent it from being conveyed to relatives and more to give it to the leaders of the people because they wanted to be praised and traded. A Judge named Isma'il bin Ishaq said: "In the past, the ignorant people did not provide a living for their wives as we do now, nor do they provide for their daughters like we do now, because they may not know the laws. enforceable inheritance. Then after Allah SWT ordered a will for parents and relatives, and stipulates the law of inheritance, then the image of an ignorant will still linger in their minds. Therefore, the will is more specifically addressed to other than heirs and is made specifically for a third of the property, as stated in the hadith narrated by Sa'ad bin Abi Waqqash that the Messenger of Allah Sallallaahu 'Alayhi Wasallam said to him

وَعَنْ سَعْدِ بْنِ أَبِي وَقَّاصٍ - رَضِيَ اللَّهُ عَنْهُ - قَالَ : قُلْتُ : { يَا رَسُولَ اللَّهِ ! أَنَا ذُو مَالٍ , وَلَا يَرِيثُنِي إِلَّا ابْنَتُهُ لِي وَاحِدَةٌ , أَفَأَتَصَدَّقُ بِثُلْثِي مَالِي ؟ قَالَ : " لَا " قُلْتُ : أَفَأَتَصَدَّقُ بِشَطْرِهِ ؟ قَالَ : " لَا " قُلْتُ : أَفَأَتَصَدَّقُ بِثُلْثَيْهِ ؟ قَالَ : " الْثُلْثُ , وَالْثُلْثُ كَثِيرٌ , إِنَّكَ أَنْ تَذَرَ وَرَثَتَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَذَرَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ { مُتَّفَقٌ عَلَيْهِ

Narrated Sa'd bin Abi Waqqas (RA):

<sup>30</sup> Ashur.

<sup>31</sup> Saba Irum, Ashraf Khan, and Haneeah Jawed, "Islamic Finance and SDGs: Connecting Dots," in *Islamic Finance and Sustainable Development A Sustainable Economic Framework for Muslim and Non-Muslim Countries*, ed. M. Kabir Hassan, Mehmet Saraç, and Ashraf Khan (Switzerland: Springer Nature Switzerland AG, 2021), 55–76.



I said, "O Allah's Messenger, I have wealth and no one to inherit from me except my one daughter. Shall I give two-thirds of my property as Sadaqah?" He replied, "No." I said, "Shall I give half of it as Sadaqah?" He replied, "No." I said, "Shall I give a third of it as Sadaqah?" He replied, "You may give a third as Sadaqah, which is still a lot. To leave your heirs rich is better than to leave them poor and begging from people." [Agreed upon].

And previously it has been discussed what Abu Bakr said to his daughter Aisha: "*now the property is an inheritance (which must be divided)*". We know that many people use wills and *tabarru'* as intermediaries to change the law of inheritance to reduce the assets owed, assuming that it can free them from sinful acts because they replace goodness with goodness too. So as a form of preventing the formation of the *tabarru'* contract from being far from this intended purpose, and it is not enough just to testify in the context of preventing allegations of dissatisfaction because of the possibility that the *tabarru'* giver and the recipient conspired in the testimony with the fact that the goods given were in the power of attorney. the giver of *tabarru'*, because the heirs and the debtor cannot get it. Thus the ownership in this purpose has no effect as stated in the second objective. From this, it is also known that Imam Malik's narration about the cancellation of waqf which is only intended for boys without daughters, because it is an act of the ignorance era, is more correct in terms of argument, even though its practice is only among followers of the Maliki school with the assumption haram or makruh, to practice the hadith narrated by Almughiirah from Malik.

Therefore, it is forbidden for a sick person who is feared from the *tabarru'* contract, but he is not prohibited from transacting with other contracts such as buying and selling and others, because in buying and selling there is an exchange that is not in the *tabarru'* contract, then the assumption is that the *tabarru'* contract transaction of the sick person is valid<sup>32</sup>.

Thus, Hibah (gift), *Wasiyah* (will), and *Mirath* are other economic tools in Islam, which play a very important role in directing wealth from

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<sup>32</sup> Ashur, *Maqasid Sharia Al-Islamiyah*.



the rich to others. *Hiba* is a plain gift given during the lifetime of a person, whereas *Wasiyah* is a will where the donor grants wealth to someone after his/her death. There is a cap prescribed on *Wasiyah* to make sure that the rights of the inheritors are not compromised. It is important to mention that Islam recognizes the right of women in the wealth of their parents, husbands, and other relatives just like men <sup>33</sup>.

## CONCLUSION

Maqasid sharia is the main objective that must be achieved in Islamic Law and has a vital role in studying Islamic legislation. Thus, maqasid sharia has an important role in Islamic finance including:

First, to determine the parameters of benefits and harms, second, to understand the various levels, priorities, categories, and objectives of sharia, third, examine the relationship between maqasid muamalah and maqasid law to ensure consistency and compliance with sharia in human activities, fourth, to provide convenience for the process muamalah legal reasoning that will be carried out, fifth, reasoning that is carried out becomes an analogy gate where sharia decisions can be extended to other cases based on the cause, sixth, as a parameter in assessing the ahad hadith, seventh, as a general guideline and parameter for issuing appropriate resolutions for scholars in carrying out ijihad, eighth, to determine the meaning of the provisions of the Qur'an and Sunnah, ninth, a strong relationship between maqasid sharia, The principles of fiqh, and the rules of Islamic jurisprudence make maqasid syariah a macro discipline that links with other disciplines in Islamic science.

The tabarru' contract is based on sympathy between members of the nation, the tabarru' contract also serves the meaning of brotherhood. Tabarru' contract is a clear benefit of hajiyat, and the influence of beautiful Islamic morals. Through the tabarru' contract, you can deliver aid to people in need, provide a living for the needy, and uphold the many benefits of Muslims.

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<sup>33</sup> Shariq Nisar and Umar Farooq, "Structural Mechanisms for Islamic Ethical Wealth for SDGs," in *Islamic Wealth and the SDGs Global Strategies for Socio-Economic Impact*, ed. Mohd Ma'Sum Billah (Switzerland: Springer Nature Switzerland AG, 2021), 155–74.



The legal maqasid of tabarru' contracts are: first so that this tabarru'at contract is reproduced considering that it contains several benefits, both general and specific. secondly, so that this tabarru' contract is issued voluntarily without the slightest doubt because this contract is a good deed and generosity. Third, improving the means of organizing tabarru' contracts according to the wishes of the donors. Fourth that donations should not be used as an excuse to waste other people's money, ranging from the rights of heirs to the debts of people who are in debt.

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