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DETERMINING MAQASHID AL SHARIA BASED COMPLIANCE FOR REAL SECTOR BUSINESS APPROACH AND METHODOLOGY

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ABSTRACT

Since the studies on sharia compliance are dominated by the financial sector and the absence of a standard on how shari'ah compliance in the real business sector, this study then aims to formulate a framework on how to linked between sharia compliance as measured by maqashid al-sharia and real business sector by using content analysis and case study methodology. The theoretical foundation in this study is the discussion of how Muslim businessmen behave in Indonesia in running their business and how to operate sharia Maqashid in the business sector. The results of this study indicate that sharia compliance in real sector business has own meaning, form, role, values, and also principles in its implementation

INTRODUCTION

Sharia compliance is a measure to see whether the practice of Islamic economics has been implemented properly, both in the financial sector and business sector stated that sharia compliance is part of corporate governance. Casper (2012) and Sugandi (2017). A culture of compliance in an institution and organization is a value, behavior and action that support the culture in the organization. Sharia compliance relates to risk management because the basic concept of sharia compliance functions as an executor and manager of compliance risk.

The study of sharia compliance is always well developed, and is an issue that is always popular among practitioners and sharia economic academics. However, at present, the discussion on sharia compliance are still spinning around Islamic finance and banking industries. The study of sharia compliance

linked to business areas in the real sector is still very rarely. The discussion also seems less systematic because it includes many elements, so the focus of the study on sharia compliance is disguised because many researchers also raised studies on quality management systems, and then drawn into the discussion about ISO and also some other topics. It can be hypothesized that there is still no standard that has addressed the sharia compliance in the real business sector. Therefore this research attempt to highlight the approach and methodology of how sharia compliance in the real business area. Hopefully, this research will provide a meaningful contribution to the development of Maqashid sharia based real business in the national and international context.

A REVIEW ON PREVIOUS STUDIES

The study of Sharia compliance in the area of Islamic finance has been carried out by Saramawati and Lubis (2014) which discusses the Sharia Compliance Disclosure Analysis in the Implementation of Good Corporate Governance. This study reveals that six out of ten Islamic commercial banks (BUS) in Indonesia have revealed sharia compliance in the implementation of good corporate governance, with a percentage of more than 50%. BUS that has an index of sharia compliance disclosure of more than 50% is those who have operations for more than 4 years. In line with this research, Mulazid (2016) in his research also emphasized that the supervisory system for Sharia compliance was well implemented by Bank Indonesia and the Sharia Supervisory Board to Syariah Mandiri Bank. Research on Sharia compliance in Islamic banking was also carried out by Lutfiananda and Sinarasri (2013) which discussed whether the attitudes, beliefs of managers and accountants of Sharia Rural Banks in the practice of sharia compliance disclosure affect the sharia compliance of Islamic banking.

Some of the studies above are examples which are show that Sharia compliance research is still dominated by Islamic finance area. The researchers have not found research on sharia compliance in the real business sector area. However, there are several studies that have tried to explore sharia compliance in business areas, yet they are trapped in the terminology of conventional business as it is not extracted from the basic wisdom of sharia business in the Qur'an, al-Hadith and the study of Fiqh al Muamalah especially in the Book of al-Buyu'.

A study of Sharia compliance in business has been carried out by Febianto (2011). He explained five aspects of business entities; namely, management functions, ongoing business processes, corporate culture, corporate governance and corporate social responsibility. This study discusses the sharia compliant model of business entities, but the content of the discussion in this study is still thick with discussion of conventional business. This is because some of the content of the research still resembles studies in modern business areas and has not touched the study area in Islamic business which is widely explained by previous scholars.

There has been a research on sharia compliance in business conducted by Othman (2016) in the form of Islamic compliance quality management system (ICQMS). Othman (2016) stated that ICQMS was built on the basis of

epistemology and ontology that supports the basics of sharia and also Maqashid al-Sharia. ICQMS operations include operational principles, public benefit, economics and management, production and operational principles of sharia organizations, sharia compliance in consumer behavior and consumer satisfaction, sharia compliance in production, operations and marketing, and several other topics.

THEORETICAL FOUNDATION OF STUDY

The theoretical foundation in this study includes three important points: first, an understanding of how business people behave in running the principle of sharia transactions; second, the proposition about sharia compliance that has been obtained in the field research; third, several aspects of Maqashid al-sharia that can be used to strengthen this research. The following figure explains the three points above:

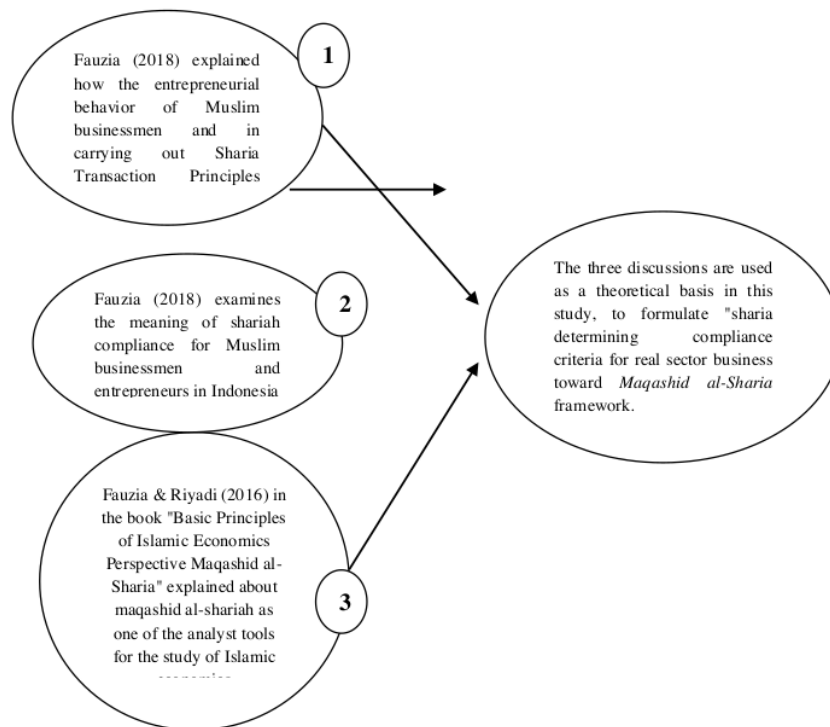


Figure1. Theoretical Foundation of Study

The picture above explains that the three important aspects on which this research is based are illustrated in the first, second and third points. The three points above relate to each other and become the basis for defining sharia compliance for the real business sector. Before discussing sharia compliance and Maqashid al-Sharia, the discussion about the behavior of entrepreneurs and Muslim businessmen in carrying out the principles of sharia transactions in their efforts needs to be explored. In the Indonesian Institute of Accountants (2007) explained that the principle of Islamic transactions is a transaction

based on ethical values, entered in various areas, in the financial sector or real. Activities are carried out coherently without a dichotomy, making the value and existence of money a reflection of investment and trade activities. This principle of sharia transactions must be carried out in the sharia business, and summarized in the Basic Framework for the Preparation and Presentation of Sharia Financial Statements (IAI, 2007). Some principles in Islamic transactions include the principle of brotherhood (Ukhuwah); the principle of justice ('is); the principle of benefit (Maslahah); the principle of balance (Tawazun); the principle of universalism (Syumuliyah).

The principle of ukhuwah, for example, bridges the interests of several parties, based on sharing economics, so that partnerships are preferred over deadly competition; The principle 'is for example, making a business free from the element of injustice which includes usury, zalim, maysir, gharar, etc; The principle of maslahah for example, by considering business activities and business financial statements to gain benefit in two dimensions, namely in the world and the hereafter, so that it always considers the public interest above personal interests. The principle of benefit, for example, related to maqashid al-shariah, is interpreted by avoiding damage in every business activity; The principle of tawazun, for example, transactions in a business must have broad benefits, and not just maximize profits for the company; The principle of syumuliyah for example, carries the spirit of equality and good cooperation without limitation of class, ethnicity, religion and race (IAI, 2007).

Fauzia (2018) in Multi-Paradigm Accounting Journal (JAMAL) classifies several informants in her research into entrepreneurs and Muslim businessmen who carry out the principles of sharia transactions. The classification is divided into groups. The first informants are graduates of Islamic boarding schools who understand well the principles of sharia; the second group of informants is not graduates of Islamic boarding schools but runs sharia principles in their business, and; the third group of informants is not graduates of Islamic boarding schools and does not practice sharia principles in their business. This study resulted in the findings of several differences in each informant in understanding and implementing the principles of sharia transactions.

On another occasion, Fauzia (2018) also studied the disclosure of the meaning of sharia compliance according to Muslim entrepreneurs and businessmen in Indonesia. This research begins with collecting data about activities carried out by entrepreneurs and business people in conducting various transactions in their business. The findings in this study are the existence of several propositions about the meaning of shari'ah compliance, the form of sharia compliance, the role of sharia compliance, benefits and also sharia compliance values. While there are different perceptions between one entrepreneur and another, the difference is more likely to mean usury and interest in a business. For some other things, there are not many significant differences apart from the discussion above.

Another aspect that is an important consideration for preparing a grand theory of sharia compliance in business is to involve the Maqashid al-sharia aspect to

analyze all business activities. Sometimes a business that is halal can bring damage to the surrounding community, due to management governance that is not in accordance with the Maqashid al-sharia. Therefore it becomes important to know about the purpose of the Maqashid al-sharia itself. Maqashid is plural of Maqsud which means purpose or intent. Shariah is the way to water sources, or can be interpreted as a source of life. So, Maqashid al-sharia is the purpose of Allah as the maker of rules to give benefit to humans and avoid damage. Benefit will be achieved by fulfilling the needs of Dharuriyah (primary), Hajiyah (secondary) and Tahsiniyah (tertiary), so that humans avoid difficulties and can become qualified servants of God (Fauzia & Riyadi, 2016). The dharuriyah aspect is a scale in which humans are damaged and weak because their basic needs are not met. The condition of humans who cannot get needs on the Dharyahyah scale will be very far from the prosperous aspect, so this aspect must always be present in humans. The hajiyah aspect is a scale under dharuriyah, where a person who does not get his hajiyah needs will not be damaged and weak, because the basic aspects of Dharuriyah are well fulfilled. The last aspect is tahsiniyah to provide comfort to humans because of the fulfillment of some wasilah to make life easier. Tahsiniyah is just below the Hajiyah order, so when someone makes a priority scale in his life, he must consider the Dharuriyah scale above the other two aspects, then Hajiyah and last Tahsiniyah.

Al-Ghazali divides Dharuriyah in five points they are guarding religion (hifz al-din), guarding the soul (hifz al-nafs), guarding reason (hifz al-aql), guarding offspring (hifz al-nasl) and guarding property (hifz al-mal). Previous scholars agreed that shariah was revealed to build benefit and avoid damage (jalb al-masalih wa dar'u al-mafasid) in the world and the hereafter, so that a just life can be upheld and social welfare can be realized (Fauzia, 2016).

METHODOLOGY OF STUDY

This research is a combination of content analysis and case study. Content analysis is research using data from representative literature and in accordance with the theme being studied. Before entering the field and collecting data on how business people carry out and comply with sharia, researchers first collected several theories about Sharia compliance, maqashid al-sharia, and the methodology of classifying some businessmen according to their business behavior.

Case study research, according to Bungin (2011) is an in-depth study of one group of people or events, which is a puzzle that must be solved. The case study begins with a case that must be solved by the researcher, starting with data collection, then data analysis and finally writing data. Yusuf (2014) explains that case studies are studies that examine in depth about one unit (particularistic); takes a relatively long time compared to historical research; descriptive; explain the reasons for a problem or issue, and; case studies oriented to disciplines. For research on shari'ah compliance, researchers use instrumental case studies which according to Stake in Denzin (1994) are an emphasis on understanding an issue, or redefine a theoretical explanation. This type of research is more in-depth, covering all aspects and events in detail, although there are some difficulties in it.

Based on searches conducted by researchers, there are no data related to sharia compliance in business for research in Indonesia, except for a few studies and discussions for Sharia compliance in the Islamic finance and banking industry. In Malaysia for example, researchers trace themes about Sharia compliance, which although not specific to business, are still related to business. For example research on aspects of muzakki adherence to zakat that has been studied by Kamil Md Idriset.al (2012) from the College of Business, University of Malaysia. This study produced a finding that business owners who are very religious, tend to be more compliant with zakat laws so the conclusion is that Islamic religious compliance plays an important role in the behavior of Zakah compliance.

Sharia compliance studies in business also include research on shariah compliant hotels conducted by Nur Hidayat Che Ahmad, Ahmad Hidayat, Ahmad Rizuan, Norrina Din, Noorliza Zainol and Mohammad Azli Razali (2015). This study specifically explores the awareness of consumers of hotel users, about their acceptance of the implementation of sharia services at the hotel.

RESULTS AND ANALYSIS

Discussion about sharia compliance will not be possible without prior understanding of the behavior of everyday business people when running their business. This understanding becomes important to measure whether most business people understand and even implement the principles in sharia transactions. The principle used in this study for the initial content is the principle of sharia transactions that has been compiled by the Indonesian Institute of Accountants. Excavations of businessmen's sharia compliance have been carried out previously by Fauzia (2018) in several of his studies. Therefore, this research is the development and refinement of previous research to define and establish compliance sharia criteria for businesses for the real sector and simultaneously analyze them using the maqashid al-shariah approach.

Sharia compliance matters for real sector business

When discussing sharia compliance in business in the real sector, principles and all points included in Sharia compliance criteria must be understood in advance. Discussion areas on sharia compliance in the real sector includes the definition of sharia compliance, the form and role of business in order to comply with sharia, how to implement the values of sharia compliance that have been carried out by Muslim businessmen in Indonesia and how to implement sharia transaction principles among business people and Muslim entrepreneurs in Indonesia. The discussed issues as follow:

Sharia compliance definition in real sector business

Sharia compliance is etymologically derived from sharia and compliance. Fauzia (2015) states that sharia comes from the word road to water or the road to life. Compliance according to Kelman (1958) is adherence to a rule, due to fear of sanctions imposed. Fauzia (2018) in her research succeeded in

concluding the meaning of Sharia compliance in real business is the business activity carried out by Muslim businessmen in carrying out their business transactions, based on Allah's orders and trying to stay away from Allah's prohibition. God's command in the context of shari'ah compliance in business is not only talking about halal and haram aspects in business, it is also closely related to how business contributes to society, so that it can provide human and natural problems.

Form and role sharia compliance- based business

Businesses carried out by complying sharia aspects is seen from the form of business activities, for example when a business sells certain products and services and implements sharia principles and from how the business procedures are carried out. Whether the business sells halal/services products and has good services is observed. Transactions are also carried out in sharia by avoiding "Maghrib Minggit" or maysir, gharar, riba, mudhtar, ikrah, najsy, ghisyy, ghabn, ihtikar, tadtis.

Maysir is a gambling behavior that contains elements of gambling. Gharar is a transaction uncertainty seen from two sides: the lack of clarity from the seller and buyer side. Riba consists of usury nasiah and riba fadl, this is absolutely prohibited in sharia because of the element of tyranny in an addition in exchange activities. Mudhtar is a sale and purchase with compulsion, for example making a purchase transaction to a seller who is trapped that the buyer can have the opportunity to act wrongfully to the seller. Ikrah is coercive buying and selling in which sellers force buyers to buy their wares. Najsy is a demand engineering, which is buying and selling in the presence of deception and engineering requests. Ghisy is buying and selling with fraud committed by the seller, while ghabn is buying and selling with fraud done by the seller. Ihtikar is buying and selling by holding back the stock of goods, assuming if the goods go up because the availability in the market is thinning then the item will be sold at a high price. Tadtis is buying and selling by stating wrong information, in order to reap higher profits.

Implementation of sharia compliance values between business actors

Some of the values successfully explored by Fauzia (2018) related to the values in sharia compliance carried out by businessmen are the values of Islamic; hard work; brotherhood; good deeds and; learners. The following pictures explain it more details.

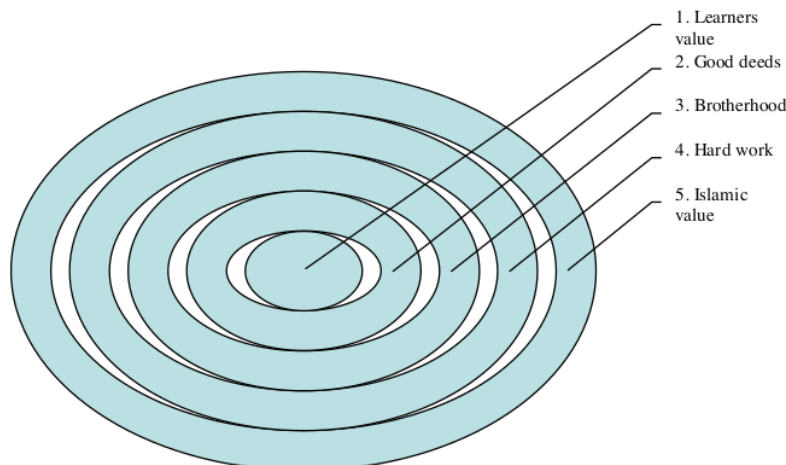


Figure 2. Sharia Compliance Values among Businessmen

Source: Fauzia, (2018)

The figure 2 explains the values that surround businessmen and entrepreneurs in carrying out transactions based on sharia. They build their business by trying to obey God's commands and stay away from all restrictions. Some of the values that have been carried out by Muslim businessmen and entrepreneurs in Indonesia are as follows: Islamic values/al-Qimah al-Islamiyah. Businessmen and entrepreneurs state that their biggest motivation in doing business is to win the pleasure of Allah. They agreed that the "Maghrib Minggit" was prohibited in Sharia, except for the discussion of usury, they disagreed about this. A small percentage of them believe that usury is haram, but conventional bank interest does not include usury; second, hard-work values /qimah al-jiddiyah, Muslim businessmen and entrepreneurs always work hard and maintain the quality of their products, even though the average management of their business is still conventional and their business is still in the form of a family business which has not been developed in a larger direction and has not been managed professionally; third, brotherhood value/al-Qimah al-ukhuwwah, which is always done by means of friendship between them, both through WhatsApp group which is sheltered by the alma mater where they attend school or because of the same organizational involvement. They have a culture of frequent visits, while building business networks, looking for suppliers, resellers, etc. to strengthen their businesses; fourth, nobility values/qimah al-amal al-shalih, which is revealed by the number of educational foundations or social businesses owned by Muslim businessmen and entrepreneurs to accompany their business success. The majority in the field, business people and Muslim entrepreneurs must have a foundation in addition to their business they perceive that this is something that can bring blessings to their businesses. They have thought about other concepts from Corporate Social Responsibility (CSR), but with their own perceptions and desires; fifth, learning values/Qimah al-Ta'allum, this is evidenced by the findings in the field, that there are many Muslim business people and entrepreneurs who do not have an educational background that supports their business. However, they move, create, sell and while continuing to learn to grow their business. They learn, duplicate the success of others to be able to realize in their lives and businesses (Fauzia, 2018).

Sharia principles based sharia compliance

The principle of sharia transaction is a very mature concept and can be used as a measure in assessing the sharia compliance of business people and entrepreneurs in Indonesia. Several principles of sharia transactions cover many aspects of business both from the aspects of finance, capital, management, cooperation and so on. The following is explained about the principles of sharia transactions and also the behavior of Muslim businessmen and entrepreneurs in carrying out the principles of sharia transactions, as has been investigated by Fauzia (2018). For more details, see the Sharia Transaction Principles below:

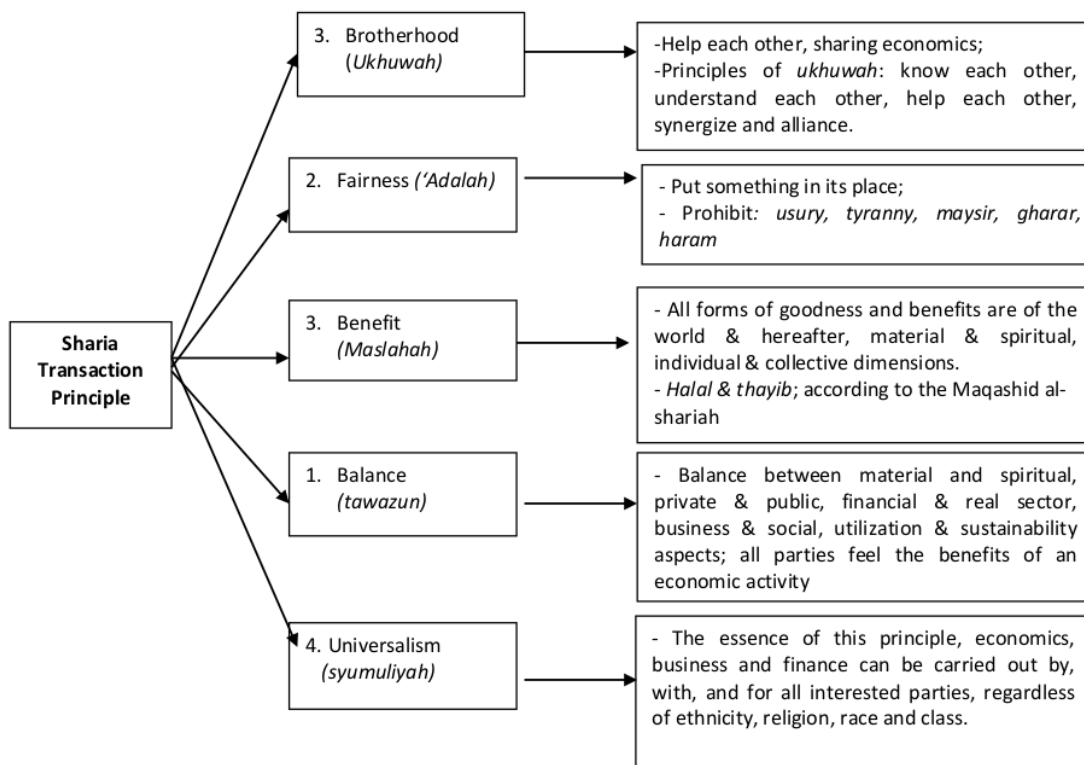


Figure 3. Principles of Sharia Transactions

Source: Indonesian Accountants Association (2007) in Fauzia (2018)

The picture 3 shows that the principle of Islamic transactions are five sharia principles that are a measure of sharia business. The principle includes the principle of brotherhood (*ukhuwah*), the principle of justice (*is*), the principle of benefit (*maslahah*), the principle of balance (*tawazun*) and the principle of universalism (*syumuliyah*). Research conducted by Fauzia (2018, 44) explains that in carrying out the principle of brotherhood (*ukhuwah*), several Muslim businessmen and entrepreneurs have upheld togetherness and many of them have adopted the principle. The application of this principle in their internal circles, for example, is done by providing convenience to the resellers and their business partners, because they consider it to be part of building *ukhuwah*. The implementation of the external community is carried out by conducting a number of community empowerment programs, namely the poor people around them.

The second principle is the principle of justice (*'is*) that has been implemented by Muslim businessmen and entrepreneurs and includes avoidance of all transactions prohibited in sharia. Basically, all agree that the business they have built has run the principles of sharia, but each businessman opposes opinions about the meaning of usury. Some business people believe that bank interest is usury, so they always avoid business capital from conventional banking. However, some state that usury is prohibited, and bank interest is not

usury and they argue that partnering with a conventional bank is not a wrong thing. (Fauzia:2018 49). The third principle is the principle of benefit (maslahah), which is a means of achieving prosperity in life. Fauzia (2018, 50) stated that many business people do not understand the true meaning of benefit, because their size in running their business is from halal and haram aspects. For example, the online gaming business is lawful because the contract is clear, namely the contract of leasing a computer to be used to play online games. However, if viewed from the maslahah perspective, the question will arise whether this business brings benefit or damage to society because the objects that become potential customers are children. Online games are games that give an "addiction" effect to young children. So it should be in running a business, not only halal and haram aspects that are prioritized, but also other aspects, namely the aspect of benefit.

The fourth and fifth principles are the principle of balance (Tawazun) and the principle of universalism (Syumuliyah). The principle of balance teaches that business is always related to the problems of the world and the hereafter, and some business people have included elements of the afterlife in their efforts. There are so many Muslim businessmen who are very loyal when dealing with charity to prepare the afterlife, but other balances related to private and public issues, the financial sector and the real sector, aspects of utilization and aspects of sustainability have not been maximally maintained by Muslim businessmen and entrepreneurs. The last principle related to syumuliyah has been widely implemented by Muslim businessmen and entrepreneurs in their business. They do business without seeing religion, race, ethnicity and class (Fauzia: 2018).

Application of Maqashid al-Shariah principles

Maqashid al-shariah has a very large role in driving the Islamic economic system, including also relating to Islamic business. In this discussion, sharia compliance with Maqashid al-Shariah perspective which covers the discussion of Maqashid al-Sharia in business is discussed. In addition, differences in sharia business compliance and maqashid al-sharia business compliance are also discussed.

Maqashid al-Sharia in business

The biggest objective of Maqashid al-sharia in business is to realize benefits for business people and the public and to avoid the damage caused by the implementation of the business. If the Maqashid al-Sharia enters the business area, the main and biggest measure to see if the business brings problems for humans and nature is by knowing the initial intention and motivation of the businessman in running his business. Intention and motivation of business people and business institutions in running their business is usually seen by the vision, mission and goals of the business organization. This can also be seen from the form and role of the business described above.

Fauzia (2018) in her book 'Islamic Entrepreneurship' explains that motivation is one of the determining factors in the form of encouragement and strength

that is in humans when they want to achieve a goal. If a business organization is built with the motivation to spread problems through the products/services it sells, then it will greatly affect the compliance of the business organization with sharia. Business motivation is based on several verses in the Qur'an and al-Hadith about how businesses should be built and implemented. Business motivation is also related to the intention of a businessman in building his business, when a business is intended to seek profit and benefits in order to worship God, then the business will run according to the rules of sharia. Business motivation is also based on the fact that business is an implementation, where a Muslim must always be obliged to carry out monotheism, sharia and morality well.

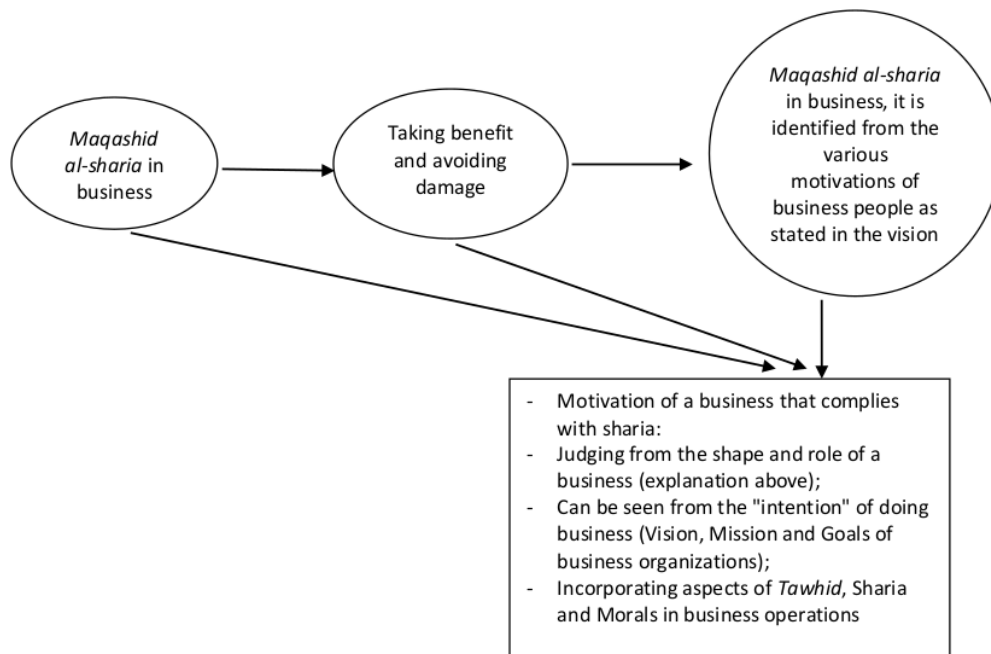


Figure 4. Maqashid al-Sharia in Business

The picture above explains that maqashid al-sharia in business is measured by the existence of problems and damage in the activities of a business, which is identified from the motivation of a businessman in running his business. Motivation in business that is also the standard of maqashid al-sharia in business can be seen by looking at the forms, roles and intentions in business, and implementing monotheism, sharia and morals in business.

Sharia business compliance or maqashid al-sharia business compliance?

An important point in designing the sharia compliance method is a core question that must be answered in this study. That question is which is more important between sharia business compliance or Maqashid al-sharia business compliance?

To answer the above question, it must be understood that Islamic economics is currently understood according to two sides, symbolic and values. If the activator of Islamic economics is merely a symbol, then when entering into the area of finance and business, it will only prioritize halal-haram aspects, regardless of the benefits and benefits of the activities built. This makes products in Islamic economics, Islamic finance and Islamic business vulnerable to conflicts and problems in the field. When Islamic economics, Islamic finance and Islamic business are understood as a benefit aspect, in addition to its halal-haram aspects, the products issued will become more humane and deeper, this is the difference between Islamic economics and existing capitalist and previous socialist behavior.

Shariah business compliance is a form of running the sharia business by emphasizing only halal-haram aspects, while the business compliance sharia Maqashid is trying to run the sharia business by emphasizing the things that are why halal and illegitimate purposes exist by maintaining aspects of internal sharia business. Maqashid sharia business compliance, is an effort to fulfill basic needs (basic need/al-Dharuriyah) of human beings, because of the fulfillment of several main means in safeguarding religion, soul, mind, descent and property. Efforts to prioritize the basic need will indirectly affect decision-making in a business, that the Dharuriyah aspect must be above the Hajjiyah aspect, and the Hajjiyah aspect must be above the Islamic aspect. The business compliance sharia approach uses a standard measure of quantity with questions about whether a business entity is lawful; whether a business entity has moved away from prohibitions that are not permitted by sharia; and whether the business entity has issued zakat; and also some other questions. However, it does not cross a question that reflects the business compliance standard of Maqashid al-sharia, namely the question of whether a business entity has provided benefits by empowering employees, business partners and the community; whether a business entity has taken care of the environment; whether a business entity is involved in safeguarding public facilities; and also some other questions.

The business compliance Maqashid sharia approach emphasizes that Islamic business is a quality business. The meaning of quality here is not only seeing halal-haram from the business but also seeing one other thing, namely whether the business being carried out has brought benefits to the surrounding community, whether the business that is run avoids any damage that results in public damage, whether the business is run able to improve the standard of living of the community, whether the cooperation carried out is able to benefit all parties, and there are many other questions related to it. For more details, see the picture below:

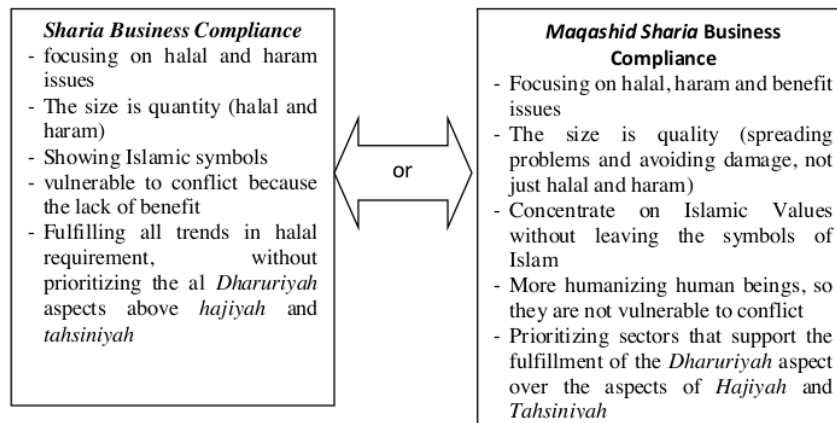


Figure 5
Sharia Business Compliance or Maqashid Sharia Business Compliance?

The picture above emphasizes that there are several points in running sharia compliance in business in the real sector. Doing business in the real sector not only fulfills the sharia aspect, but now it must be well thought out how to fulfill the aspects of sharia compliance in accordance with the maqashid al-shariah. This is included in the terminology of Maqashid al-shariah business compliance.

CONCLUSION

This study reveals that sharia compliance for the business sector must consider aspects of the form, role, value and principles of sharia transactions without having to discard the role of Maqashid al-Sharia in determining aspects of compliance. The approach and method used in this study is literature study using content analysis and also studies in the field using a case study.

Muslim businessmen in Indonesia are well aware of how they should be engaged and how to comply with sharia, so that the majority of them have carried out orders and prohibitions on doing business. However, the majority of business people have not adhered to the Maqashid al-Sharia well, so there are some disharmonies that occur between the sharia compliance they have done and the aspects of benefit that have not arisen due to the business they are working on.

This led to the emergence of a new terminology and nomenclature in this study, which is preferred, Sharia business compliance or business compliance sharia. The answer to the question according to researchers is in the current industry era 4.0. Sharia compliance does not have to be driven by sharia symbols, but also must carry the values of benefit derived from the Maqashid al-Sharia to build justice in the Islamic society. Therefore, one form of Sharia in the real business sector needs to be socialized, namely a nomenclature on how the implementation of business compliance for the real business sector in the 4.0 era should be implemented.

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