

The Realization on Maqasid al-Shariah and Maslahah Concepts in Cooperative Governance Practices

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Accepted: 15 November 2021 | Published: 1 December 2021

DOI: <https://doi.org/10.55057/ijaref.2021.3.4.5>

Abstract: *In today's communities, low-income groups are often not eligible for financial assistance or loans. This led to the development of cooperatives with the objective to develop mutual help among members of the cooperative. Due to their dual identity, cooperatives have always faced complex governance challenges, and there is a well-established institutional framework to deal with this. Cooperative managers sometimes face difficulty recognising the real goal of the cooperative. Profit and growth missions are in constant negotiation to ensure the welfare of members is maintained. The starting point is shared principles which provide guidelines as to how cooperatives should be owned and governed. The principles of governance in Islam are formulated as early as the formation of Madinah as an Islamic state. These can be referred to in the al-Quran and al-Hadith, maqasid al-shariah, with the emphasis given on maslahah 'ammah (public benefits) and the prevention of mafsadah (wrongdoing). Although Islam does not elaborate on all the needs of human life, it does not mean that Islam neglects to outline the policies and principles of all rules, especially the systems needed by human life to ensure the survival that will benefit and keep away from harm. The methodology used to prepare this article is based on literature reviews from past researches and sourced from the al-Quran and al-Hadith.*

Keywords: Maqasid al-Shariah, Maslahah, Cooperatives, Governance

1. Introduction

The role of cooperatives as the third sector of the economy is becoming increasingly important. The progress achieved by Malaysia in various aspects of development presents external and internal challenges to the cooperative sector. These include the challenges of globalisation, deregulation and liberalisation. The most fundamental challenge for the cooperative sector is to maintain its integrity and identity.

From the point of view of the financial sector, Malaysia has been recognised as a successful Islamic finance hub by other countries through its ability to offer various types of financial products and services. As such, Malaysia is expected to serve as a similar benchmark for the non-financial sector as well. Furthermore, the cooperative concentrates on the lower-income groups as they are perceived as 'unbankable' to the financial institutions due to their financial incapability (Samad & Shafii, 2015). This indirectly reflects the capacity and strength of cooperatives to serve the function of financial inclusion to the society as a whole.

The role of financial inclusion has, therefore, become even greater as a means to improve the livelihoods and as a way to strengthen financial resilience of the less fortunate. It provides a chance to save for the future, to invest and to generate revenue and to ensure against bad events. Stability and improving the global situation give us the opportunity to accelerate financial inclusion as an important global agenda. The aim of achieving financial inclusion is a shared responsibility which positively affects the poor. Challenges in implementing financial inclusion can only be resolved when the different stakeholders, each with different ranges of power and control, working together in consistent and integrated ways. It should involve government, regulators, market agents, the finance industry and consumers (Aziz, 2014).

Islamic Cooperatives

Ismail, M. I et al. (2016) highlighted that being an Islamic Cooperative does not mean that the cooperative is registered as 'Islamic Cooperative'. An Islamic cooperative only refers to the cooperative carrying on activities based on the Shariah principle with a focus on the mutuality principle for goodness.

According to Ismail and Said (2012), the Islamic cooperative has its unique characteristics. The features of the Islamic cooperative are as follows:

- i. The policies and objectives must be in line with the al-Quran, the as-Sunnah, Ijma', and other sources of Islam.
- ii. The capital used in business must be agreed to by all members.
- iii. All members must agree on management and operation of the co-operative and delegate certain members to perform activities of the company.
- iv. Profit and loss proportions are based on shares and fees contributed.
- v. Institution of *zakat*, *infaq*, *sadaqah*, and *waqf* must function well.
- vi. Admit the profit-oriented motive as long as the *Shariah* principles are strictly followed.
- vii. Acknowledge freedom of business and common rights.

Governance from the Islamic Perspective

Tan Sri Dato' Seri (Dr.) Ahmad Sarji Abdul Hamid mentions the best practices of governance in an epilogue of the book titled "*Corporate Governance from the Islamic Perspective*". According to him, the best practices of governance refer to the enculturation of ethics and procedures. It emphasises that values must be internalised. Many examples illustrate the real gap between knowledge and practice (2012).

As such, it is recommended in the Asian Development Bank (2000) study that a good corporate governance system should consist of:

- i. a set of rules that define the relationships (including respective rights and responsibilities) between shareholders, managers, creditors, the government and other stakeholders; and
- ii. a set of mechanisms that help to enforce these rules directly or indirectly.

Choudhury and Hoque (2004) review the governance system from the Islamic view. They argue that the objective of CG is to determine the criteria for understanding the relationship between critical variables supported by policies, programs and strategic alliances. The relationship between these variables will then determine the strength or weakness of their support. Clear and precise objectives will lead to the determination of policy, program and strategic alliance and also the implementation of proper instruments as required by an organisation (Hassan, 2009).

“.....if we really want to internalise the good practices of corporate governance from the Islamic perspective, we may also need to look at the implementation of the ISO family of standards from the Islamic perspective. With these standards, companies are subjected to scrutiny in order to be awarded with the ISO certificate. This is very much in the interest of good governance” (Tan Sri Dato’ Seri (Dr.) Ahmad Sarji Abdul Hamid, 2002).

The Islamic economic system is a rule-based incentive system based on Shariah rules, with the ultimate goal of maintaining a just and harmonious social order. The rules are composed of those who deal with the individual’s body and his state of consciousness, those who govern his relationships with others, and those which constitute the code of conduct necessary for the community as a whole (Mirakhor, 1989). Compliance with the rules promotes social integration and unity and preserve the intended social order. Shariah offers a comprehensive framework to identify, to recognise, respect and protect the property rights of every individual, community, society and state (Iqbal & Mirakhor, 2004).

Islam demands high standards of ethical behaviour from everyone in society. All economic agents are *Mukminin* whose behaviour corresponds fully with the requirements of the Shariah. These economic agents are expecting to faithfully comply with the terms of contracts and accountability for respecting the property rights of others which will automatically lead to the elimination of problems arising from asymmetric information, moral hazards and adverse selection, and would thus guarantee optimal governance (Askari et al., 2010). The basic principles of good CG in Islamic finance emphasise three main elements, namely, accountability, transparency and reliability (Muneeza & Hassan, 2011; Ansari et al., 2012).

2. Literature Review

Definitions and Understanding of *Maqasid al-Shariah* and *Maslahah*

Maqasid refers to a purpose or objective, principle, intent or goal (Kamali, 2008). Shariah, on the other hand, is defined as following strictly the injunctions of Allah or the way of Islam (*din*) (Dusuki & Abdullah, 2007). Dusuki and Bouheraoua (2011) explain that the *Maqasid al-Shariah* represents the objectives and the rationale of the Shariah with the aim to protect and preserve public interests (*maslahah*) in every segment of life. It encompasses all disciplines, laws, regulations, policies, instructions, obligations, principles, beliefs, devotions and actions designed to protect the interest of human beings in all segments and aspects of life (El-Najar, n.d). For a number of Islamic legal theorists, it is an alternative expression of people’s interests (*masalih*) (Auda, 2008).

As cited in Dusuki and Abdullah (2011), referring to Imam Al-Ghazali (d. 1111):

“The objective of the Shariah is to promote the well-being of all mankind, which lies in safeguarding their faith (*din*), their human self (*nafs*), their intellect (*‘aql*), their posterity (*nasl*) and their wealth (*mal*). Whatever ensures the safeguard of these five serves public interest and is desirable”.

According to the principles of *Maqasid al-Shariah*, the Islamic system places equal emphasis on the ethical, moral, social, material gain and religious dimensions in order to enhance quality and fairness for the society as a whole (Lahsasna, 2016). Lagan (2006) claims the need for an organisation to manage the ethical dimension of their business, particularly to improve the governance rules. Svensson and Wood (2004) emphasise that the business executives need to

consider business ethics and public opinion proactively. They postulate that business ethics can help discover why companies continuously fail to maintain their business performance (Svensson & Wood, 2004).

Imam al-Shatibi (d.1388), as cited in Dusuki and Abdullah (2011), emphasises the epistemological (*aqidah*) dimension when defining *Maqasid al-Shariah*:

“The primary goal of the Shariah is to free man from the grip of his own whims and fancies, so that he may be the servant of Allah by choice, just as he is one without it”.

Dusuki and Abdullah (2011) further cite ‘Allal al-Fasi (d.1974):

“The overall objective of Islamic law is to populate and civilise the earth and preserve the order of peaceful coexistence therein; to ensure the earth’s going well-being and usefulness through the piety of those who have been placed there as God’s vicegerents; to ensure that people conduct themselves justly, with moral probity and with integrity in thought and action, and that they reform that which needs reform on earth, tap its resources, and plan for the good of all”.

The above definitions promote cooperation and mutual support within the family and society as manifested in the realisation of *maslahah* (public interest). In many situations, *Maslahah* connotes the same meaning as *maqasid*, and the scholars have used the two terms almost interchangeably (Dusuki & Abdullah, 2011).

Governance from *Maqasid* Perspective

Lahsasna (2016) propose that corporate governance can be defined from the *Maqasid* perspective as: “The process and structure are used to direct and manage the business and affairs of the company towards enhancing business prosperity and corporate accountability with the ultimate objective of realising long-term shareholder’s value. It also takes into account the interest of other stakeholders in its broad concept within the values and principles of *Maqasid al-Shariah*”.

Chapra and Ahmed (2002) elaborate on the Islamic economic system that can help to realise human welfare through the provision and distribution of scarce resources in line with *Maqasid*, without constraining the freedom of the individual, creating macroeconomic imbalances and ecological systems that ultimately undermine family and social cohesion.

Therefore, *Maqasid al-Shariah* will have strong influence and impact on the major components of governance such as the process, reporting and structure by influencing objectives, the vision, mission, as well as values of governance. In Islam, the concern for good governance in all forms of transactions has long been addressed in the Quran.

Dusuki (2008) proposes The Pyramid of *Maslahah* with the aim to achieve the well-being of the society. The three levels of the pyramid in Figure 1 reflects the different degrees of importance in terms of fulfilment responsibility by the managers. The *Daruriyyat* (Essentials) level constitutes the most fundamental responsibility to be fulfilled as compared to the other levels, *Hajiyyat* (Complementary) and *Tahsiniiyyat* (Embellishments). The degree of decision-making becomes less fundamental as the pyramid moves up, albeit more virtuous, to attain the perfection and well-being of society. It is assumed that individuals would strive for the upper

level as the former is fulfilled. In the context of the cooperative setting, it means that the governance organs should perform their duties to preserve the rights of stakeholders.

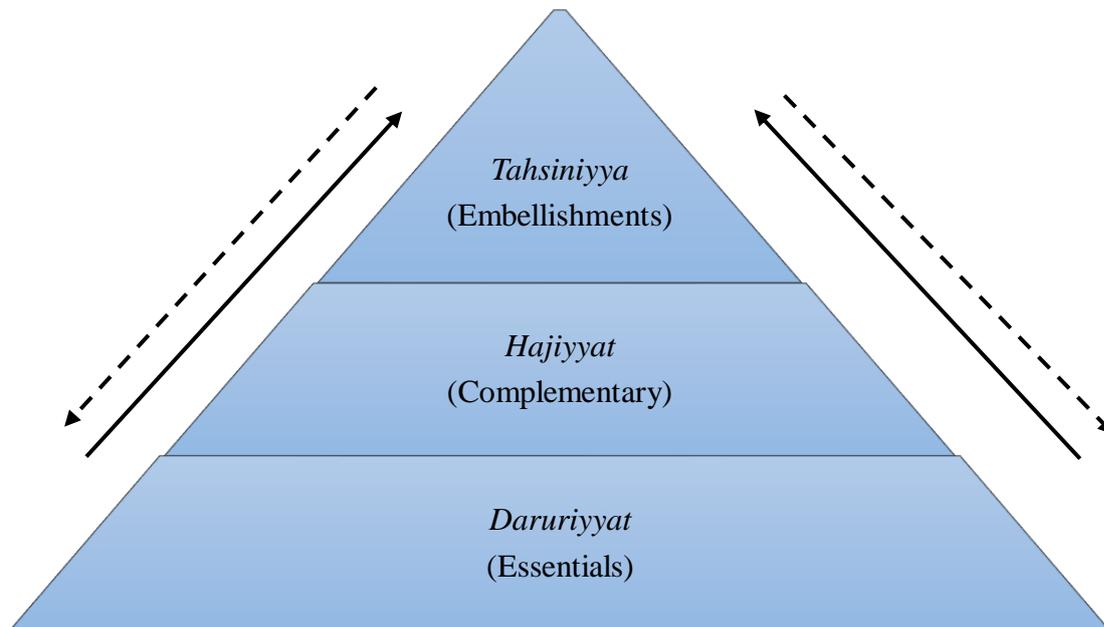


Figure 1: The Pyramid of *Maslahah*

Source: Dusuki (2008)

Maslahah is a juristic device used in Islamic legal theory to promote public benefit and prevent social evils or corruption. According to al-Ghazali (d. 1111):

“As for *maslahah*, it is essentially an expression for the acquisition of benefit or the repulsion of injury or harm, but that is not what we mean by it, because acquisition of benefits and the repulsion of harm represent human goals, that is, the welfare of humans through the attainment of these goals. What we mean by *maslahah*, however, is the preservation of the ends of the Shariah”.

The definition reinforces the importance of ‘*the preservation of the ends of the Shariah*’ which refers to the objectives of the Shariah including the protection of faith, life, posterity, intellect and wealth as the fundamental meaning of *maslahah*. The modern approach of *maslahah* is directly related to *Maqasid al-Shariah* since the realisation of *maslahah* emphasises is the primary objective of the Shariah (Dusuki & Abdullah, 2011).

3. Methodology

The methodology used to prepare this article is based on literature reviews from past researches and sourced from the al-Quran and al-Hadith.

In this regard, there no specific measures review the impact of Islamic finance transactions on the society, environment, and individuals. What are the roles of Board, management, Shariah Advisory Council (SAC) and regulators to realise the *Maqasid Shariah* of Islamic finance? As such, it is crucial to examine the measures currently adopted to promote the realisation of *Maqasid Shariah* of Islamic financial transactions.

Table 1: Relevant Principles in Corporate Governance

Principles	Surah, Verse
Honest fulfilment of all contracts.	al-Maidah, 5:1
Prohibition of betraying any trust.	al-Anfal, 8:27
Prohibition of deriving income from cheating, price manipulation, dishonesty or fraud.	al-Nisa', 4:29
Prohibition of bribery to derive undue advantage.	al-Baqarah, 2:188
A concern for minimising problems arising from information asymmetry between contracting parties.	al-Baqarah, 2:282

Source: Lahsasna (2013)

Lahsasna (2013) lists the relevant principles in corporate governance based on al-Quran as shown in the above Table 1. He also lists the practice of *Maqasid al-Shariah* in corporate governance as follows:

- i. Ensure proper management of the organisation.
- ii. Ensure that the organisation is managed according to the principle of Islamic law.
- iii. Determine the accountability and responsibility in decision-making and activities in the organisation.
- iv. Preserve the interest of the shareholders.
- v. Preserve the interest of the stakeholders.
- vi. Ensure the transparency of the decision-making process, fairness and trustworthiness in managing a company.
- vii. Create a system of checks and balances. This helps to achieve the goal of creating and enhancing shareholders value and stakeholders while protecting the interest of Shariah.
- viii. Promote honesty and ethics, while preventing betraying any trust. It prevents one from deriving income from cheating, price manipulation, dishonesty, fraud and bribery.
- ix. Set out the expectations of the Bank on an IFI's Shariah governance structures, processes and arrangements to ensure that all its operations and business activities are in accordance with Shariah.
- x. Provide a comprehensive guide to the Board, Shariah governance and management of the IFI in discharging its duties in matters relating to Shariah.
- xi. Outline the functions relating to Shariah review, Shariah audit, Shariah risk management, and Shariah research.

Abu-Tapanjeh (2009) suggests that two aspects shape the nature of Islamic governance:

- i. Institutional law, the sovereignty of the Shariah claim on every aspect of life, ethics and social that refers to the legal system of the Qur'anic and As-Sunnah. These ethical principles determine what is right, just and fair, the nature of corporate responsibility, the priority of society, together with some specific governance standards.
- ii. Business ethics based on certain economic principles and Islamic finance that have a direct impact on corporate practices and policies. These include zakat institutions, prohibition of usury (*Riba'*) and prohibitions on speculation. This ethical business ethics calls for the development of an economic system based on profit and loss sharing (PLS).

Profit-Loss-Sharing (PLS) Mechanism

The cooperative operates on an equity-based instrument in the form of a Profit-Loss-Sharing (PLS) mechanism primarily in the form of *musharakah* and *mudharabah* contracts. Islamic economists favour equity-based instruments and emphasise social welfare and religious commitment towards Islamic banks to realise *Maqasid al-Shariah* in respect of economic and

financial transactions, including social justice, equitable distribution of income and wealth and promoting development and economic growth (Chapra, 2000).

The Islamic financial model should be based on equity to suit the Shariah spirit and overall Islamic views. To differentiate the establishment of Islamic finance from conventional, they must aim to promote the norms and values of Islam and protect the needs of the Muslim community without degrading its commercial viability. Cooperatives emphasise PLS mechanism that are appropriate to the needs of micro entrepreneurs. To take the example of Bank Islam Sudan (SIB) as an example in implementing the concept of *musharakah* financing to smallholders in Sudan has proven that the PLS mechanism can be applied and benefits the rural community (Al-Harran, 1990).

The Islamic banking system will be an efficient model for mobilising and allocating resources in the economy as a result of the elimination of benefits and the concept of PLS (Haron, 1996). The alternative mechanisms used by IFIs to avoid dealing with interest are the adoption of various forms of profit-sharing contracts that are specific to Islamic banking. This contract increases equity and equitable distribution of profit and risks in investment (Bashir, 1984).

Meeting *Maqasid al-Shariah* requires integrating PLS mechanisms and the ethical conduct of business to achieve the public interest (Bhatti & Bhatti, 2009). *Maqasid al-Shariah* substantially blocks any effort to acquire wealth by illegal means, which leads to social inequality and social waste (Bhatti & Bhatti, 2009). Therefore, the structure of governance in IFIs should involve the establishment of an SC and internal performance review as a continuing Shariah compliance and provision of relevant information.

Table 2 summarises how Islamic credit cooperatives are meant to combine Islamic and credit union principles:

Table 2: Islamic Principles vs. Islamic Financial Cooperative Principles

Islamic Principles	Islamic Financial Cooperative Principles
Prohibition of interest-based transactions.	Emphasise a member's investment by offering an opportunity to purchase shares. Loans are made as financial contracts between borrowers and the cooperatives.
Profit and loss sharing.	Established member-ownership through a purchase of share savings. Share profits among members as dividends.
Transactions must be backed by assets rather than financial speculation. Financial contracts must detail the specific product/service being bought or sold.	Provide loans by purchasing physical assets and either: (i) leasing it to the member (<i>ijarah</i>), or (ii) transferring ownership to the member who pays a markup (<i>murabahah</i>).
Prohibition of financing activities considered harmful to society.	Lend only to Shariah-compliant businesses.

Source: WOCCU (2012)

Tables 3 and 4 show among the verses of the Qur'an as a reference in the implementation of work ethic which is part of the principles of governance of an organization

Table 3: The al-Quran Reference of Islamic Work Ethics

Subject	Al-Qur'an Verses
Agreements and promises	Ar-Rad 13:25, Al-Qasas 28:28, Yunus 10:71
Consideration for others	An-Nisaa' 4:36, Al-Mumtahina 60: 9.
Consultation	Ash-Shura 42:38, Taha 20:103, Al-Kahf 18:22
Continuous improvement	Al-Araf 7:42.
Cooperation.	Al-Hujraat 49:9, Maryam 19:96.
Equality and unity	Al-Isra' 17:35.
Fairness in dealings	Al-Anaam 6:152, Al-Mumtahina 60:8, An-Najm 53:32, Al-Maida 5:8.
Fairness in wages.	Al-Imran 3:57, Saba' 34:37.
Hard work.	Al-Baqara 2:62; 82, Al-Anaam 6:135
Helping others	As-Saff' 61:14, An-Nahl 16:97, Yunus 10:41
Honesty and justice.	Al-Baqara 2:177, Az-Zumar 39:2; 3
Humble.	Hud 11:23
Patience.	Hud 11:11
Righteous/Intention	Al-Baqara 2:25; 225, Al-Baqara 2:62, At-Taubah 9:105, As-Saff' 61:8, Al-Qasas 28:19
Social order.	Al-Imran 3:110, Al-Baqara 2:273
Truth.	Al-Anfal 8:27, Yunus 10:61, An-Nur 24:8

Source: adapted from Ali (1988)

Table 4: The Islamic Practices' Sources from Al-Qur'an

Reference	Subject
Al Quran. An-Nur 24:37, Fatir 35:29	The importance remembrance of Allah, do prayers while in trade and sales engagement
Al Quran. Ad-Dzariyat 51:57	Obligation of mankind for an ibadat
Al Quran. Al-Qasas 28:77	Seeking of wealth, not to mischief and the aim of the Hereafter.
Al Quran. Ghafir 40:58; Al-Baqarah 2:30-33; Al-Mujadila 58:11; Luqman 31:20	The importance of training, learning and development
The Quran, An-Nisaa' 4:58-59	Implementation of human resources in the way of God with trust and responsibility
Al Quran. Al-Baqarah 2:286	Doing job based on capacity and competency
AlQuran.Al-Ahqaf 46:19	Grading the employees work based on quality and quantity of their work
Al Quran. Al-Araf 7:85	Understanding the contract and meet the conditions
Al Quran. Al-Kahf 18:87-88	Economic/Business Performance
Al Quran. Al-Baqarah 2:42, At-Taubah 9:16	Accurate information and prohibited false assertions, unfounded accusation and false testimonies
Al Quran. Al-Furqan 25: 67	Balance between those (extremes)
AlQuran.Al-Qasas 28:26-28	Mutual consultation and consent

Source: Adapted from Ali (1988), Ahmad (2006), Rivai et al. (2012), Rafiki and Abd Wahab (2014)

4. Conclusion

Overall, the governance system from the Islamic point of view can be said to be a system to manage human life based on a complete Islamic philosophy and principles. Generally, the Islamic governance is aimed at creating an efficient and impeccable service, social security, justice, stability, and prosperity of society.

This means that all the deeds and practices of Muslims in all their affairs are counted as worship as long as they do not violate Islamic law. This principle is known as *Tawhid* philosophy, which emphasize on the oneness of God, in the sense that **He is one and there is no god** but Him, as stated in the *Shahādah* (“witness”): “There is no god but God (Allah) and Muhammad is His prophet.” *Tawhid* is the core of one's faith. Any conduct and action, whether through intentions, words or deeds that magnify other than Allah SWT will affect the status as a believing Muslim. This means that Muslims need to fear and fully obey Allah SWT alone.

By appreciating this philosophy of *Tawhid*, Muslims will not dare to commit malpractice, tyranny, damage and so on for fear of God's punishment and retribution in the Hereafter. While the world is only temporary and is a loan from God for the preparation of the hereafter. All the contributions and successes they have created in this world based on the principles of *Tawhid* will reflect their rewards and goodness in the Hereafter.

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