

Formulation of Business Fiqh Contemporary (Formulation of Sharia Maqashid E-Commerce)

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ABSTRACT: The formulation of Islamic law is based on a universal-humanity foundation, covering worldly and hereafter interests, aiming to make people happy protect them from evil and destruction, and Islam is suitable in various conditions, times and places. There is a greater difficulty if the development of Islamic law does not want to go through the path of the goals of Islamic law, or at least the general principles of Islamic law. Therefore, in the development of Islamic legal thought, thinkers are relatively quick to agree on 'masalahah' as 'maqashid sharia' or what is more popularly known as the goal of Islamic law. More than that, masalahah in its development is not only a legal goal but also becomes a proposition in the formulation of Islamic law itself. The importance of research based on Islamic legal philosophy through the maqashid sharia of electronic commerce (e-commerce), because it is a modern trading model, not discovered by researchers in classical fiqh, and even contemporary fiqh before the 1990s, in Indonesia e-commerce began in the early 2000s. This qualitative research paradigm and its type of normative legal research used secondary data traced and obtained from libraries and internet sites to find new arguments regarding the formulation and purpose of Islamic law on e-commerce.

KEYWORDS: *Formulation, Business Fiqh Contemporary, Maqashid Sharia, Electronic Commerce (E-Commerce).*

I. INTRODUCTION

The capitalist economic system dominates the world economic system today. (al-Alkhalidi, 1984). Most commercial transactions, such as buying and selling, banking, leasing, insurance, pawning, use this system. The world is not satisfied with this system through its positivist-materialistic philosophy. This economic system destroys most of the noble values in modern human life and changes the form of financial transactions between one party and another into a kind of sharp conflict, where the strong party sucks the blood of the weak party.

Therefore, the world is now looking for a saviour to guide it to the path of salvation from the economic and moral crisis that threatens and destroys its existence. Only Islam can offer the best solution to get out of this stifling crisis. Islam with a unified theory exist to straightens the path of financial transactions on the right and balanced line. Imam al-Syathibi, is a great deal of attention and understanding through his in-depth study of the *maqashid of sharia*. He said the sale and purchase transaction activity is for the servant's benefit, both in the world and hereafter. (al-Syathibi, 2014). The benefit in Islamic law can only be achieved by obeying the rules, principles and agreeing to its purpose. Therefore, a Muslim must not ignore the purpose of the legitimacy of electronic commerce (e-commerce). The most important thing is that how to 'tasharruf', implement, control its purpose correctly and precisely. Naturalistically, take advantage and leave *mafsadat* for the benefit.

So, there is no doubt that electronic commerce (e-commerce) is a way and a clause to obtain valuable goods, own, trade, and take advantage of them to benefit this world and the hereafter. This is the meaning of the *Shariah* order and its delegation. This paper focuses and specifically examines the formulation of *sharia maqashid* in electronic commerce (e-commerce).

II. IDENTIFICATION OF MAQASHID SHARIA

Al-Quran, as the main source of Islamic law, does not contain many detailed regulations on worship and social relationship between humans and humans (*muamalah*). From 6360 verses of the Qur'an, there are only 368 verses related to aspects of the law. (Nasution, 1984). This shows that in most of the legal issues in Islam, Allah SWT only gives the basics or principles in the *Qur'an*. Then the *Sunnah*, as the second source of Islamic law after the *Qur'an*, explains and details these principles. Fiqh scholars, including al-Syathibi, developed the

principles contained in the two sources of Islamic law, namely the Qur'an and Sunnah, by relating it to the purpose of Islamic law or the *maqashid of sharia*. (Jaya, 1996).

Maqashid Syariah (Arabic) consists of two words, *maqashid*, plural form of the word *maqshad/ qashdun*, which means intent, intent or purpose. (Manzhur, 2013). There are several meanings literally; the word "*qashd*" consists of three letters, namely *q, sh, d*, which means "*give something intentionally*", such as saying: "*qashada-yaqshudu-qashdan-fa huwa qaashidun*". *Al-qashd* also means to uphold the path/way, hold/lean, and with intention/purpose. Another meaning of *Al-qashd* is the position between extravagance and miserliness, meaning "simplicity", as in the Qur'an surat Lukman (31) verse 19 says, "*Dan sederhana adalah dalam berjalan...*" (**translation:** *and be modest in walking*). *Al-qashd* can also mean "*al-'adl/ justice*." (Lahsasanah, 2008).

According to Abdurrahman that the word "*al-maqashid*" has three meanings. *First*, committing an intentional act, as opposed to a futile act, as it is said *the meaning of a word is returned to the pointer/which indicates the word*. *Second*, doing an act that is intentional as well means the opposite of the act of forgetfulness. That forgetfulness is a loss of direction or being in forgetfulness, then the word "*al-maqshad*" is the opposite of that, that is, to face/direct and avoid forgetfulness, as well as with the will and awareness. *Third*, committing acts intentionally instead of joking or jokes/drama. Where the play is the emptiness of the true purpose, the motive prescribed, then "*al-maqshad*" is the opposite: reaching the true purpose/goal and upholding the motive prescribed. Thus "*al-maqshad*" here contains value or price. (Thaha, 1994).

From the three linguistic meanings of the word "*al-maqshad* or *al-qashd*" above, it can be understood and concluded that the first meaning is getting benefits, the second is having intention, direction, and avoidance of forgetfulness, and the third is to produce intent /purpose that is correct and valuable. As for terminology, *maqashid* is the goals (intentions) and the secrets (wisdom) set by Allah SWT in every law of all his laws. (al-Fasi, 1993).

The word *sharia* means the path to the source of water, which is the view of life that is mostly based on the source. (Rahman, 1992). *Sharia* ('*syariat*') is everything that Allah says in the *Qur'an* and the *Sunnah* of the Prophet. In terminology, *sharia* is the laws set by Allah for human beings brought by the Prophet SAW, including the law of behaviour that a branch of law called (*furu*) assembled in fiqh. *Sharia* has a broad meaning, including faith, Islam and good deeds. While in the narrow scope of *sharia* is limited to strict laws (*qath'i*) that can no longer be challenged, derived from the *Qur'an* and *Sunnah*, determined by *ijma'*. The existence of *sharia* in a broad and narrow sense aims to facilitate classifying the material under discussion. (Djazuli, 2018).

In the book *al-Muwafakat* by al-Syathibi, there are several terms related to *maqashid al-Syariah*, namely *maqashid al-syar'iyyah fi al-syari'ah*, and *maqashid min syar'i al-hukm*. (al-Syathibi, 2014). These three terms have the same meaning, namely the purpose of Islamic law.

According to al-Syathibi, the *maqashid of sharia* is the purpose of *sharia* to realise human welfare in this world and the hereafter. The explanation of *sharia maqashid* is quite detailed in his work, *al-Muwafaqat*. He said that the obligation (*taklif*) was created to realise the servant's welfare, and not a single law of God is detached from the purpose. If the law does not have a meaningful purpose, it equals the burden of something that a servant cannot carry, and this is not possible with the laws of God. (al-Syathibi, 2014).

In this regard, Muhammad Abu Zahrah explained that the real purpose of Islamic law is for the benefit or use in maintaining five things, namely religion, soul, property, intellectualism, and lineage, because human beings live in this world within the scope of these five things, and human dignity is measured by as far as he maintains those five things. (Zahrah, 1984).

Al-Juwaini (d. 478 H/1085 M) was the first scholar to bring a treatise on *ushul fiqh* that introduced the theory of levels of necessity ("*tingkatan keniscayaan*"), which is similar to the theory of levels of a necessity today. He suggested five levels of *maqashid*, namely necessity (*dharurat*), public needs (*al-hajjah al-'ammah*), moral behaviour (*al-makrumat*), advice (*al-mandubat*) and what cannot be included for specific reasons. He said that the *maqashid* of Islamic law is infallibility (*al-'ismah*) or the preservation of faith, soul, intellect, family, and property. (Auda, 2015).

Abu Hamid al-Ghazali (d.505 H/1111 M) developed the theory of his teacher (*al-Juwaini*) further in his book *al-mustashfa* (clear source). He compiled the "needs" suggested by al-Juwaini, starting from 1) faith; 2) soul; 3) intellectualism; 4) descent; 5) property. He was also the proclinator the "protection term (*al-hifzh*)" toward these needs. Meanwhile, Al-Ghazali's view is strongly influenced by the Syafi'i school, which considered '*qiyas*' as the only valid method of '*ijtihad*', refuses to give an independent argument or legitimacy to any '*maqashid*' or '*mashalih*' whatever was offered; he even called it pseudo-benefit (*al-maqashid al-mauhumah*). (al-Ghazali, 2013). Al-Ghazali presented some specific and interesting points that *maqashid* is used as a cause or logical ration (*'illat*), whereas the *Shafi'i* scholars criticise the *maqashid* for not being *mundhabith* (*ghair al-mundhabithah*). For example, al-Ghazali said anything intoxicating, liquid or solid, is '*haram*' based on '*qiyas*' to '*khamar*' because '*khamar*' is forbidden to keep the mind. (al-Syathibi, 2014).

Syihabuddin al-Qarafi (d. 684 H/1285 M) defined "*maqashid*" as the intent/intention of the Prophet SAW himself in his deeds. He wrote in his book *al-Furuq* (differences) that there was a difference between the actions of the Prophet SAW in his capacity as a Messenger who conveyed revelation, as a judge, and as a leader. The implication in Islamic law is that anything he said or did in his capacity as a Prophet becomes a law of general and permanent nature. However, legal decisions relating to the military, public trust, the appointment of judges and governors, the distribution of spoils of war and the signing of letters were all specific to his capacity as a state leader. (al-Qarafi, 1998).

From some of the opinions above, it can be concluded that the *maqashid of sharia* is the purpose of Islamic law in the form of wisdom or the secret of Allah SWT that is understood and achieved by humans for the benefit of the universe and the hereafter.

III. DISCUSSION

The *Sharia*, as Ibn al-Qayyim said, is as a base and foundation based on law/rules, for the welfare of the servant in this world and the hereafter, all of which lead to justice, mercy, goodness, and wisdom, for every human being. So something that goes from justice to tyranny, from mercy to vice, from benefit to loss, and from wisdom to absurdity is not part of *sharia*. If interpreted, then *sharia* is God's justice for His servants, His mercy for all beings, His shadow on earth, His wisdom to show His existence, and the sincerity of His Messenger, the most complete and truest guidance. (al-Jauziyah, 2006).

The scholars do not distinguish between *mashlahah* and *maqashid*/the purpose of *sharia*, both of which preserve the goodness of His creation, and therefore the spectrum of *maqashid sharia* is the spectrum of *mashlahah* itself, meaning that if it deviates from one of them, it means deviating from both. (Quwaidar, 2004).

It should be understood that the most important goal that must be considered in all financial transactions is to preserve money/property ('Asyur, 2020) because money/property is one of the necessities of life that must be achieved for the benefit of the world and the hereafter, and the law and reason support it. As the words of God (An-Nisa [4]: 5): "*Dan janganlah kamu serahkan kepada orang yang belum sempurna akalnya, harta (mereka yang ada dalam kekuasaan) kamu yang dijadikan Allah sebagai pokok kehidupan...*" (**translation:** and do not hand to people who are not perfect in mind, your property (those who are in power) that God has made as a tree of life). (Kemenag, n.d). A person maintains his survival, needs food and drink, clothing as protection from heat and cold, shelter, and so on. All that requires money/property, and if it is considered non-existent, a person will be harmed from this aspect, will be a soft prey for his enemies, and this is also a violation of *maqashids*, namely religion, soul, and lineage. The existence of money for a nation is to save it from enemies and close the door to the colonisation of other nations who want to colonise it. ('Asyur, 2020).

So money/property is an important instrument to uphold human welfare in this world, and through trade routes have been set procedures to obtain it and to achieve the goal of *Sharia* (Allah SWT), something that everyone needs is not always available everywhere, and taking it by force and unhealthy competition includes criminal acts, such as corruption, fraud, monopolies, embezzlement, theft, and more. For that, there must be a system that allows everyone to take what he needs by mutual consent (*'an taradhin*) without violence and conquest, then the trade is a system and an application, with the right and proper mechanism. (al-Bubi, 2003).

The goals of *sharia* come from many sources such as *nash-nash*, laws from the *Qur'an*, *Sunnah*, *ijma'*, mind and other arguments to prove/establish *maqashid sharia* and its scope.

IV. FORMULATION 'MAQASHID SYARIAH' AGAINST E-COMMERCE

Formulation of *Maqashid Syariah* (Sharia Goals) in electronic commerce is summarised into several categories as follows:

4.1. First Formulation: Responding to New Useful Knowledge

The urgency of fiqh is to observe and maintain sharia objectives (*maqashid sharia law*), including in the field of *muamalat*, absorbing global momentum and developments in various fields. In today's modern reality, many trading activities did not exist at the time of revelation or at the golden age of Islam, such as buying and selling credit, buying and selling online (*e-commerce*) and so on. It is something new for trade due to technological and scientific progress in civilisation.

Islam does not teach its followers to reject anything new; it is good if it is beneficial and does not leave anything foreign. However, it must be selected which things are good to be adopted and which are bad to be removed, which ones must be enforced and which ones are abandoned, and which ones must be maintained for their existence and even developed towards something more advanced and better.

The *E-commerce applications* are not created by Muslims, but by Westerners and non-Muslims, and this is why some may question, Can we adopt it from the Eastern or Western system? If the answer, this *e-commerce* is prohibited because it is not following the *Sharia*. Allah SWT has not sent down help and strength to answer this, or an answer similar to it, which shows similar expressions of rejection and refutation.

According to the author of the answer above, it (*e-commerce*) is prohibited, has limited itself to the broad nature of the Islam making it narrow, and distorts the word of Allah SWT, which states in the Qur'an (Al-Baqarah [2]: 29) "*Dialah yang menciptakan utukmu semua yang ada di bumi...*" (**translation:** *He who created for you all that is on earth*). (Kemenag, n.d). This also leads to the rigidity of the *sharia* and loses its universal characteristics, dynamic, and suitable for every place and time.

It would be nice to parse and answer the question above, namely: "permitted", provided that imitated and imported does not conflict with Islamic beliefs and *sharia*. Because buying and selling models is for the benefit of the *ummah* (followers). For example, a Muslim adopts something good from new developments in online buying and selling (*e-commerce*), innovating and collaborating in a way that he has run before. It can be likened to a working bee with instructions and revelations from the God; it moves and flies between trees and flowers, eats all good fruit, then absorbs what it eats and digests it. Then it produces honey out of its belly, which is of various colours, and in it is healing medicine for humans. (al-Qardawi, 1994).

One of the objectives of *sharia* (*maqashid sharia*) in regulating electronic commerce through *control* is that Islam responds and accommodates new useful knowledge even if it is from non-Muslims. It is permissible if it does not contain obvious harm. Ibn Taimiyah said that studying and taking medical knowledge from their books – from non-Muslims, is like adopting the results of their research to make it more effective and efficient. It is better as long as their books are not written for a specific negative purpose. Unless there is an element of treason or deception, but only to take advantage of their inventions such as the field of clothing production, agricultural patterns, weapons production, and others. (al-Harani, 1998).

Rasulullah SAW to Abu Hurairah RA, said when *Satan* ordered him to read the verse of *Kursi* in the *Qur'an* (*Ayat Kursi*): *You are honest, while he is lying*. (al-Bukhari, 2020). The *hadith* states that *Satan* may be able to speak the truth, and a Muslim can learn from him if he knows the honesty of his words and the clear benefits. Ibn Hajar Al-‘Asqalani said that if the devil knows what is beneficial to the believer, the devil takes it and plunges people into disobedience. For this reason, the believer must know and realise the wisdom of everything. (al-Asqalani, 2004).

A conscious Muslim is a Muslim who can distinguish between truth and falsehood, beneficial and destructive, and should always learn and seek the benefits of knowledge and wisdom from any media.

It was narrated from Rasulullah SAW that wisdom is a treasure/ something valuable for a believer who is lost, so wherever he finds it, he is more entitled to it. (al-Tirmidzi, 2000). This *hadith* is weak in *sanad*, but its meaning is correct and accepted by Muslims and applies and is most widely applied to the results of science and technology, including in *e-commerce*. (al-Qardawi, 2000).

4.2. Second Formulation: Circulation and Popularisation of Commodities

Syari' (Allah SWT) ordered that money/wealth circulate in the hands of everyone and move in the form of consumption or investment, not limited to a small group of individuals. (Zahrudin, 2004). As His word (Al-Hashr: 7), "...*supaya harta itu jangan beredar di antara orang-orang kaya saja diantara kamu...*" (**translation:** *so that the treasure does not circulate among the rich among you*). (Kemenag, n.d). The role of the Indonesian government is to regulate the system and mechanism for the circulation of money/assets and its regulations. (‘Asyur, 2020).

This illustrates that Islamic *sharia* views electronic commerce (*e-commerce*) as a means, media, and facilitator in growing, mobilising, and developing resources and other aspects of economic activities. The importance of goods and materials movement and circulation in society is like water and wind; if the water is turbulent and the wind becomes too strong, the ships can stagnate. Likewise, freezing money and stopping its movement brings neither good to its owner nor society and the country - but with its movement, the wheel of life turns, and nature is innovated in many ways. (al-‘Alam, 1993).

With a simple understanding, that the transaction contract is regulated for the transfer of ownership rights through the exchange (*mu'awadhah*) or social (*tabarru'*) so that *shighat* (*ijab and qabul*) are needed, namely expressions/statements that show mutual agreement between the parties in making a deal. Conditions that are determined for the benefit of both parties, if their conditions are met, then it becomes "legitimate", and the validity of the contract has effects/consequences (e.g. sale and purchase, transfer of ownership).

In addition, *sharia* also encourages the promotion and circulation of goods and money by warning against monopolising, seizing, or hoarding and preventing them from being traded, as this will lead to other damages. (‘Asyur, 2020).

One of the tools of the circulation of wealth and the promotion of commodities is to facilitate as many transactions as possible, regulate the allowed emergency, and prioritise the share of what is in his interest over what may be impeded by the expected evil. The legality of electronic commerce under special control will achieve this goal in a certain way.

4.3. The Third Formulation: Ease of Facilities and Consideration of Needs

This is a general purpose of the characteristics of Islamic law, especially concerning financial transactions. There is a human desire for *muamalah* between one party and another because this is a necessity in society and the sustainability and stability of their lives. Most of a person's needs have to do with what is in the hands of the owner, and the owner may not be in the same place or country, but one may be in the east and the other in the west. There is, therefore, no way to achieve its objectives or trade with it except through the internet or other available technological devices so that electronic commerce is "permitted" as a means to achieve the desired goal without difficulty, and in that way, one can acquire and own something.

According to Ibn 'Asyur, ownership is the acquisition of something from which a person gets what fulfils his needs through results or compensation, namely price. Entrepreneurship/business is a production activity that requires energy and expertise or buying and selling consensual services between the two. ('Asyur, 2020).

The basics or arguments for this purpose are quite a lot, including the Word of Allah SWT (Al-Baqarah (2): 185), "*Allah menghendaki kemudahan bagimu, dan tidak menghendaki kesulitan bagimu*", (**translation:** *Allah wants ease for you, and does not want difficulties for you*). Another verse (Al-Ma'idah: 6) says, *and Allah does not want trouble for you*. (Kemenag, n.d). The verse shows the ease and lightness of Islamic law, the prohibition against refusing that convenience. This is a characteristic of the *Sharia*, which is naturally to be followed, and the ease of its rules.

The permissibility of electronic commerce (*e-commerce*) facilitates and strengthens the intent or purpose. Due to many buying and selling transactions and leasing using internet media (*e-business*), if it is said to be not '*halal*', there will be difficulties that disturb the peace of life. The statement that it is permissible is under what Islamic sharia has built on ease and eliminates difficulties that lead to pessimism. The scholars revealed a well-known fiqh method, says (*difficulty brings ease*). (al-Syuyuti, 20013).

4.4. Fourth Formulation: Increasing Trade Opportunities and Expanding Its Coverage

Modern electronic tools, especially the internet, have broad prospects, varied aspects, and cover many fields. For example, in the scientific field, the internet network allows customers to see as soon as possible the latest developments of science in terms of innovations and inventions, in industrial and medical technology, it can also connect them to public libraries anywhere in the world. Additionally, tourists can travel to various countries and visit other important archaeological and commercial monuments in tourism.

In the area of commerce, it provides the customer with a wealth of information about what he or she may need, such as a commercial guide that includes trading names, personal names, addresses, and telephone numbers. The parties can bargain and see the products offered, and dialogue can occur between two or more parties *through chat or video calls*. Merchandise offers, descriptions, prices, how to pay, how to ship goods, and their value can even be accessed and transferred over the internet in new ways, and people in third-world countries and rural areas have been able to have useful products and goods, which do not exist in their home country.

In other words, all of them can use these modern technologies - Internet and *e-commerce* - to serve humanity well, are beneficial in many ways if the person uses them properly, and can also be used to build a rational global civilisation, which contributes to connecting man with his God, introducing him to his work and position. Likewise, the internet and electronic commerce can be used and invested in understanding *aqidah, da'wah*, and Islamic principles, thereby increasing the quality of peace of mind, thought, and faith. In addition, it can carry out the exchange of world heritage and culture by entering influential sites to reach many parties and enrich this trade with thinking, science, culture and literature. (al-Buti, 1995. Zahrudin, 2004).

It should be noted that handing over the exploitation of electronic commerce to non-Muslims leads to the spread of useless materials and goods that undermine trust and morals to contribute to the spread of Islamic principles. The manifestation of Islamic principles, right belief as a whole, and to highlight the majesty of *sharia*, and its realism in dealing with various problems of life and society, and to show that Islamic ethics is a practical and correct method of dealing between individuals, there is no doubt that it is a legitimate means, and trade electronics is one of them.

4.5. Fifth Formulation: Fulfilling Human Instincts

One of the solid foundations on which the objectives of Islamic *sharia* are built is the fulfilment of instincts, whereby nature humans are very loving and have a strong desire to have something (money/wealth), as Allah SWT says (al-Fajr: 20), "*Dan kamu mencintai harta benda dengan kecintaan yang berlebihan*" (**translation:** *and you love material with excessive love*). (Kemenag, n.d). Islam stipulates signs in obtaining money/wealth to protect human instincts from oppression and deprivation. Thus their activities are motivated to invest and develop the money they have, and in this case, there are mutual benefits for all, both individually and collectively. (al-Maududi, 1983).

Islam has regulated and perfected this instinct. It does not suppress and oppress as Eastern-Communism does, and it is not unrestricted as Western-Capitalism does. On the other hand, everyone has rights and obligations and a legitimate method of ownership, where there is no injustice, injustice, or greed, and all means against it, such as usury (excessive love), fraud, theft, and gambling (*maisir*). Thus, Muslims compete healthily to obtain and develop money/wealth, spend it on charitable purposes, and draw closer to God.

E-commerce is a popular and successful way to earn and invest money/treasure. Therefore, the researcher believes that electronic commerce laws and regulations by legal supervision, taking into account the nature and human spirit, makes humans who have normal character, have good character and behave properly, and in their creation and formation.

V. CONCLUSION

The '*maqashid syariah*' was a way of discovering the secrets and wisdom of God's laws for humans. All these rules are for the benefit of humans in this world and the hereafter. The formulation of contemporary *sharia* business fiqh in the field of electronic commerce (*e-commerce*) *maqashid sharia* perspective was a response to new knowledge that is beneficial to humans, circulation and popularity of commodities, useful facilities and consideration of needs, increasing trade opportunities and expand its scope, and fulfil human instincts.

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