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Imam Ghazali and Ibn Ashur

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# ***Maqāṣid Al-Sharī‘Ah* views on Islamic banking according to Imam Ghazali and Ibn Ashur**

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Abstract: Islamic banking is struggling in maintaining it in the financial industry by adhering to sharia principles. Looking at data taken from the Financial Services Authority (FSA) in 2009-2018, the development of Islamic banking continues to increase, starting from the performance, products, and other services. However, there are some problems in Islamic banking such as the *murobahah* financing which still supports around 60% -90% in the approval of Islamic banking. The research method used by literature study by comparing reading material with the latest journals related to the research theme. This research reveals that in general the main purpose of *maqāṣid al-sharī‘ah* according to the agreement of the scholars is to achieve *maslahah*. To see the above, the *maqāṣid al-sharī‘ah* model is one model that can measure the performance of Islamic banking with a conception based on Islamic scholars, especially from Imam Ghazali and Ibnu Ashur. The five main points that become aspects of the benchmark are preserving religion, preserving the soul, preserving the mind, preserving the progeny and preserving the wealth.

Keywords: *Maqāṣid al-sharī‘ah*, Islamic banking, *maslahah*, preservation.

## **Introduction**

At the side the actualities over the improvement of the Islamic banking industry in Indonesia has experienced a few stages of improvement compared to improvement of the conventional banking industry.<sup>1</sup> Presently, Islamic banking proceeds to struggle and preserve its presence within the financial industry in understanding with Islamic principles. With the method of improvement in a few nations recorded within the *Islamic Finance Country Index*, sharia banking in Indonesia is still classified as running in place.<sup>2</sup> Looking at data taken from the Financial Services Authority (OJK), the development of Islamic banking continues

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<sup>1</sup> Lemiyana, Analisis Komparasi Kinerja Keuangan Perbankan Konvensional Dan Perbankan Syariah (Studi Kasus Pt Bank Negara Indonesia, Tbk Dan Pt Bank Negara Indonesia Syariah, Tbk), *I-Finance*, Vol.1. No 1 July 2017, p. 55

<sup>2</sup> Thalha Alhamid, Perkembangan Perbankan Syariah (2009-2018) di Indonesia dan Sumber Daya Manusianya, *Sekolah Tinggi Agama Islam Negeri (Stain) Sorong*, 2019, p.1

to improve services from all aspects provided, ranging from performance, products, and other services. The development of Islamic banking can be looked from the following table:

Table 1: The development of Islamic Banking of the year 2009-2018

Indicator	Period									
	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
<b>BUS</b>	717	1226	1052	1756	2009	2163	1990	1869	1825	1868
<b>UUS</b>	312	285	360	541	613	320	311	332	344	347
<b>BPRS</b>	363	436	519	559	565	276	283	287	274	289
<b>ASSET</b>	66090	97519	145.467	195018	242276	272343	296262	356504	424181	451202
<b>DPK</b>	52271	76036	115415	147512	183534	217859	231175	279333	334888	354421

Source: OJK Report<sup>3</sup>

As shown in figure one the development of Islamic banking shows an increase from 2009 to 2014 and decreased in 2015 to 2017 before experiencing slight increase in 2018. This is in line with the development of Islamic financial institutions in Indonesia. The policy makers greatly influence the laws relating to Islamic economics in Indonesia.<sup>4</sup> Looking at the development of sharia banking which is quite significant, there are several studies that explain that sharia banking is more interested in developing financing with the *murobahah* contract system because the profits are certain and uncomplicated.<sup>5</sup> According to Sofyan Sulaiman argument that tells about the *murobahah* system dominates 60% -90% in the Islamic banking scheme.<sup>6</sup> There are still a few individuals who consider that Islamic banking is the same as conventional banks, which recognizes as it were by the expansion of Islamic names in each of their products.<sup>7</sup>

<sup>3</sup>Look at the Report OJK.go.id accessed on 22<sup>nd</sup> April 2020, hour: 13.26

<sup>4</sup>Politik Hukum Ekonomi Syariah dalam Perkembangan Lembaga Keuangan Syariah di Indonesia, *Journal of Media Hukum*, Vol. 25, No. 1 June 2018, p. 12

<sup>5</sup>Atina Shofawati, Murabahah Financing in Islamic Banking: Case Study in Indonesia, *Proceedings of 5th Asia-Pacific Business Research Conference*, 17 - 18 February, 2014, p. 2

<sup>6</sup>Sofyan Sulaiman, Penyimpangan akad Murabahah di Perbankan Syariah dan Beberapa Isu mengenai Murabahah, *Journal of Madania*, Vol. 7:1, 2017, p. 190

<sup>7</sup>Subandi, Problem dan Solusi Pengembangan Perbankan Syariah Kontemporer di Indonesia, *Al-Tahrir*, Vol. 12, No. 1 May 2012, p. 7

According to Imam Ghazali objectives of Sharia is the most basic effort to survive and withstand damage factors and encourage welfare.<sup>8</sup> In its application, the maintenance of five main elements, namely: religion, soul, mind, progeny and wealth become an appropriate measurement tool in measuring the performance of Islamic banking.<sup>9</sup> The maintenance of religion, soul, mind, progeny and wealth can be done by maintaining the existence of the five main elements in human life and protecting it from various things that can damage it.

If the five elements above are ignored, it will cause damage in the world and the hereafter.<sup>10</sup> Islamic financial institutions must be able to move to uphold justice with the right *maqāṣid al-sharī'ah* in all its activities.<sup>11</sup> The implementation of *maqāṣid al-sharī'ah* model in sharia banking can be seen from its operational activities, as well as the products offered.

## **Analysis and Discussion**

### **Islamic Banking**

Islamic banks are usually referred to banks that operate on the principle of profit sharing.<sup>12</sup> Islamic Banks are banking institutions whose operations and products has developed based on the Qur'an and the Hadith of the Prophet SAW.<sup>13</sup> This is to maintain the principles of sharia and increase public trust on Islamic banking. In other words, an Islamic Bank is a financial institution whose main business is providing financing and other services in the payment traffic and

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<sup>8</sup>Ika Yunia Fauzia and Abdul Kadir Riyadi, *Prinsip Dasar Ekonomi Islam Perspektif Maqoshid Syariah*, (Jakarta: Prenadamedia Group, 2015), p. 41

<sup>9</sup>Mustafa Omar Mohammed, Kazi Md. Tarique and Rafikul Islam, Measuring the Performance of Islamic Banks using *Maqoshid based* model, *Intellectual Discourse*, 23: Special Issue (2015) 401-424, p. 408

<sup>10</sup>Jaser Audah, *Al-Maqoshid Untuk Pemula*, (Yogyakarta: Suka Press, 2013), p. 116

<sup>11</sup>Fredy Dwi Herlyanto dan Tri Wahyu Oktavendi, Meretas Kinerja Maqoshid Syariah pada Bank Umum Syariah, *Program Studi Akuntansi Fakultas Ekonomi dan Bisnis*, Universitas Muhammadiyah Malang, 2018, p. 79

<sup>12</sup>Syaakir Sofyan, Perkembangan Perbankan Syariah di Indonesia, *Bilancia*, Vol. 10, No. 2, Juli – Desember 2016, p. 96

<sup>13</sup>Agus Waluyo, Kepatuhan Bank Syariah Terhadap Fatwa Dewan Syariah Nasional Pasca Transformasi ke dalam Hukum Positif, *Jurnal Inferensi Penelitian Sosial Keagamaan*, Vol. 10, No. 2, Desember 2016, p. 526

circulation of money whose operations are adjusted to Islamic Sharia principles with strict supervision from the Sharia Supervisory Board (DSN).<sup>14</sup>

One Muslim scholar, Ahmed Al-Najjar, characterizes an Islamic bank with this definition: Islamic banking may be a banking financial institution whose work is to raise stores and contribute them within the scope of Islamic law in a way that serves to build an Islamic integration community, achieve equitable distribution in way of Islam.<sup>15</sup> In expansion to the legal sources over Islamic banking in conducting its commerce activities must be in agreement with sharia and refer to essential and auxiliary Islamic law, including:<sup>16</sup>

- a. Primary legal sources:
  - Al-Qur'an that is the first source of Islamic law and that ranked at the highest level.
  - al-hadith which is the second source of Islamic law and is ranked at the second level after the Qur'an.
- b. Secondary legal sources:
  - *Ijtihad* is independent legal reasoning.
  - *Ijma'* is the consensus of the scholars.
  - *Qiyas* is namely analogous reasoning.

In other words, the legal source over to reinforce existing activities is yielded by sharia. As we know, a bank as a financial institution that incorporates a legal substance so that by law is considered a legitimate subject or a supporter of rights and commitments.<sup>17</sup> Banks that operate according to sharia principles are banks that follow sharia provisions, especially those concerning Islamic forms of *muamalah*. Furthermore, in the form of *muamalah* which is not Islamic, it must be shunned in practice such as *gharar*, *usury* and *maysir*. This is in line with the word of God that said:

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<sup>14</sup>Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori ke Praktik*, (Jakarta: Gema Insani Press, 2001), p. 36

<sup>15</sup>Akmal as-Sayyid Thayyal, *al-Bunuk al-Islami...*, p. 54

<sup>16</sup>Ibid, p. 5

<sup>17</sup>Khotibul Umam, *Perbankan Syariah: Dasar-dasar dan Dinamika Perkembangannya di Indonesia...*, p. 36

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تُحَرِّمُوا طَيِّبَاتِ مَا أَحَلَّ اللَّهُ لَكُمْ وَلَا تَعْتَدُوا ۗ إِنَّ اللَّهَ لَا يُحِبُّ الْمُعْتَدِينَ . وَكُلُوا مِمَّا رَزَقَكُمُ اللَّهُ حَلَالًا طَيِّبًا ۗ وَاتَّقُوا اللَّهَ الَّذِي أَنْتُمْ بِهِ مُؤْمِنُونَ .

O you who have attained to faith! Do not deprive yourselves of the good things of life which God has made lawful to you, but do not transgress the bounds of what is right: verily, God does not love those who transgress the bounds of what is right.<sup>18</sup>

In another opinion, Gharib El-Gammal provides a brief understanding, he said: Islamic banks are institutions that conduct banking business with their commitment to avoid dealing with usury interest.<sup>19</sup> Thus, avoidance of interest that considered usury is one of the challenges facing the Islamic world today. This is in accordance with Allah's prohibition on usury:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا الرِّبَا أَضْعَافًا مُضَاعَفَةً ۗ وَاتَّقُوا اللَّهَ لَعَلَّكُمْ تُفْلِحُونَ .

O believers! Do not live on usury (compound interest) which is compounded over and over again. Have fear of Allah so that you may prosper.<sup>20</sup>

It is encouraging that recently Muslim economists have devoted great attention to finding a substitute for the interest system in banking and financial transactions that is more in line with Islamic ethics.<sup>21</sup> This effort made in an effort to build an interest-free economic theory model and it is testing of equitable economic growth and the distribution of income that reaches prosperity. It assumed that the usury system of justice is a real mistake, and God has explained it in His Word:

وَمَا آتَيْتُمْ مِنْ رِبَا لِيَرْبُوَ فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُو عِنْدَ اللَّهِ ۗ وَمَا آتَيْتُمْ مِنْ زَكَاةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَٰئِكَ هُمُ الْمُضْعِفُونَ .

O believers! Do not live on usury (compound interest) which is compounded over and over again. Have fear of Allah so that you may prosper.<sup>22</sup>

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<sup>18</sup>Al-Qur'an, Surah Al-maidah verse 87-88

<sup>19</sup>Ghoribul al-Jamal, *al-Masharif wa Buyuti at-Tamwil al-Islamiyyah*.... p. 25

<sup>20</sup>Al-Qur'an, Surah Ali Imron verse 130

<sup>21</sup>Muhammd ad-Din, *A'malu al-Bunuk wa Syariatul-Islamiyyah*.... p. 27

<sup>22</sup>Al-Qur'an, Surah Ar-rum verse 39

For this reason, Islamic banks has established with an interest-free banking mechanism and prioritized a profit-sharing system. Islamic banking established based on philosophical and practical reasons.<sup>23</sup> Philosophically, because of the prohibition of usury taking place in financial and non-financial transactions.

The history of Islamic banking was the first time the establishment of an Islamic bank in Egypt, namely the establishment of the Islamic Rural Bank in Cairo in 1963.<sup>24</sup> The first Islamic bank owned by a private party is the Dubai Islamic Bank, which has founded in 1975 by a group of Muslim entrepreneurs from several countries. The development of Islamic banking internationally began with the Foreign Minister's Session held by the Organization of the Islamic Conference in Pakistan in December 1970.<sup>25</sup> Egypt submitted a proposal to establish the International Islamic Bank for Trade and Development and a proposal to establish a Federation of Islamic Banks. After getting discussions from 18 Islamic countries, the proposal was finally accepted. In 1975, a Minister of Finance Session organized by the Organization of the Islamic Conference in Saudi Arabia approved the establishment of the *Islamic Development Bank*.<sup>26</sup>

### **Issues in Islamic Banking**

Indonesia in carrying out its policies regarding banking by adopting a dual banking system. What is meant by dual banking system means that the implementation of two banking systems (conventional and sharia simultaneously) whose implementation is regulated and supervised directly by the applicable laws and regulations.<sup>27</sup> However, the problem that arises is that some Islamic banks do not stand alone (independent), so that in the implementation of its operations are still holding to conventional banks. If so, the existence of Islamic banking is only one part of the conventional bank development program, whereas the desired initial

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<sup>23</sup>Khotibul Umam, *Perbankan Syariah: Dasar-dasar dan Dinamika Perkembangannya di Indonesia...*, p. 51

<sup>24</sup> Andrew Shandy Utama, Sejarah dan Perkembangan Regulasi Mengenai Perbankan Syariah dalam Sistem Hukum Nasional di Indonesia, *Jurnal Wawasan Yuridika*, Vol. 2, No. 2 September 2018 [187-200], p. 190

<sup>25</sup> Ibid, p. 191

<sup>26</sup> Ibid, p. 191-192

<sup>27</sup>Rozalinda, Potret Perbankan Syariah di Indonesia..., p. 27

thing is a purely independent Islamic bank with various instruments as a nationally recognized part of banking.<sup>28</sup>

Besides that, there is one product that is being discussed by Muslim scholars on Islamic banking products is the *murobahah* contract. Shari'ah the existence of *murobahah* contract is recognized and the legality has been written in the MUI fatwa, but the wetness of the contract is not free from criticism. One of the most Muslim scholars who criticized the *murobahah* covenant was Abdullah Saeed. In his writings Rozalinda quoted Abdullah Saeed who suspected the time value of money in *murobahah* -based financing, but according to Saeed, he was not recognized by Islamic banking practitioners, because if recognized would lead to recognition of interest or usury.<sup>29</sup>

When a study discusses what methods are used by modern banking based on the usury system, it will be found that only time can determine, before wealth is collected in the hands of a few groups through the suffering of most humans.<sup>30</sup> his suffering is compounded by the fact that wealth only revolves/circulation among those who are rich. With this reality, the poor now will remain the poor. This situation makes the economy more oppressive to the poor. Allah SWT said about this:

وَمَا آتَيْتُمْ مِنْ رَبًّا لِيَرْبُوَ فِي أَمْوَالِ النَّاسِ فَلَا يَرْبُو عِنْدَ اللَّهِ وَمَا آتَيْتُمْ مِنْ زَكَاةٍ تُرِيدُونَ وَجْهَ اللَّهِ فَأُولَئِكَ هُمُ الْمُضْعِفُونَ.

And [remember:] whatever you may give out in usury so that it might increase through [other] people's possessions will bring [you] no increase in the sight of God -whereas all that you give out in charity, seeking God's countenance, [will be blessed by Him] for it is they, they [who thus seek His countenance] that shall have their recompense multiplied!.<sup>31</sup>

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<sup>28</sup>Ibid, p. 29

<sup>29</sup>Sofyan Sulaiman, Penyimpangan Akad Murobahah Di Perbankan Syariah Dan Beberapa Isu Mengenai Murobahah, *Jurnal Madani*, Vol. 7:1, 2017, p. 203

<sup>30</sup>Imran N. Hosein, Larangan Riba dalam Al-Qur'an dan Hadist, (Kuala Lumpur: Ummavison, 1997), p. 21

<sup>31</sup>Al-Qur'an Surah Ar-Rum ayat 39

That should be with three problems to developing an Islamic banking performance in Indonesia:<sup>32</sup>

1. *The problem of aspects of commitment to the implementation of sharia is still low.*

As is known, in 1967 banking in Indonesia experienced a transition from Dutch banking to national banking. Finally, the New Order government has now issued Banking Law No. 14 of 1967, and the central law No. 13 of 1968. In 1967 the Banking Law concerning the establishment of the banking system in Indonesia was under the supervision of a central bank that was authorized to issue monetary policy and coordinate and lead the supervision of all banks, thereby increasing the standard of living of the people. At that time, Banking Law No. 14 of 1967 is seen as an essential legal basis to be able to uphold the banking industry. As banking activities progressed, Islamic banking was introduced through Banking Law No. 7 of 1992 as the basis for the existence of Islamic banking in Indonesia.<sup>33</sup>

Until now, Islamic and conventional banking has run according to their respective permits.<sup>34</sup> However, the commitment to live the principles of sharia in Indonesia is still considered low with a lot of criticism from Muslims themselves.

2. *Problems with aspects of HR that are not yet competent and professional.*

There are two main assets, namely natural resources (natural resources) and human resources (human resources) that are very important in determining the success of the development plan and development of an organization or institution, including in this case for the development of Islamic banking in Indonesia. Of the two resources, we would agree that human resource is the most important, however, because of its abundant natural resources in the absence of human resource capacity to manage it, then growth will be too late.<sup>35</sup>

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<sup>32</sup> Subandi, *Problem dan Solusi Pengembangan Perbankan Syariah Kontemporer di Indonesia...*, p. 12

<sup>33</sup> Sutan Remy Sjahdeini, *Perbankan Syariah...*, p. 3

<sup>34</sup> Ascarya, *Bank Syariah: Gambaran Umum*, (Jakarta: PPSK Bank Indonesia, 2005), p. 2

<sup>35</sup> Mardani, *Aspek Hukum Lembaga Keuangan Syariah di Indonesia...*, p. 30

3. *Problem Aspects of Strategy in Marketing that are not yet Productive and are relatively slow.*

From the components contained in the marketing mix mentioned above, apart from the HR that has been described previously, then what is also a priority is the product and promotion issue, among others are:<sup>36</sup>

- Products: The rapid growth of Islamic Financial Institutions must be accompanied by product innovations offered to the public. Without an increase in service quality coupled with an increasingly diverse portfolio of Islamic financial products, banks and Islamic financial institutions will find it difficult to compete with conventional banking.<sup>37</sup> There are three things; First, the compliance with Islamic principles. Second, good service quality. Third, continuous product innovation.
- Promotion: the essence of promotion is to support the activities of market penetration strategies and market development strategies, management is important to be able to know the needs of existing markets with existing products and at the same time be able to increase sales in new markets.<sup>38</sup> Therefore, Islamic financial institutions are universal institutions, promotional activities must be clearly stated that Islamic banks are not exclusive to Muslims only, but can be used for non-Muslims.

Besides that, there are some problems that are common in Islamic banking, including:<sup>39</sup>

- a) religious issues, namely the issue of halal, haram interest, usury, second legal issues, third political issues, social society, and finally the issue of financial resources. ideology. This situation is common and results in compromises that eventually form the 'gray area' or provide a confusing

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<sup>36</sup>Hani Werdi Apriyanti, *Model Inovasi Produk Perbankan Syariah di Indonesia*, Jurnal Ekonomi Islam, Vol. 9 No. 1 2018, p. 87

<sup>37</sup>Ibid, p. 88

<sup>38</sup>Ibid, p. 89

<sup>39</sup>Mutiara Dwi Sari, Zakaria Bahari, Zahri Hamad, *Isu-Isu Dibalik Pendirian Perbankan Syariah Di Indonesia: Suatu Tinjauan Sejarah*, *Jurnal Aplikasi Bisnis*, Vol. 7 No. 1, Oktober 2016, p. 51-52

definition of Indonesia, namely Indonesia is not a secular state, but also not an Islamic state.

- b) Second, is the issue of law. The absence of a statutory law that allows the operation of Islamic banking in Indonesia makes sharia banking visible. This is due to the concept of Islamic banking not in accordance with banking laws in force at that time.
- c) The third issue is a political issue. A strong desire from one party or community group is not enough if the government does not behave in the same way. Moreover, those in the elite santri community are only a small group of people. The experience of successful Islamic banks established in other countries shows the need for a strong commitment of the Islamic community in general with the inculcation of belief, the obligation to carry out life in an Islamic way, including in economics.

In the formulation of company objectives, there have been major developments. The company's goal is not only to focus on meeting the interests of the owners, which are proxied by profitability, but also meeting the interests of all stakeholders. One way to increase company effectiveness in realizing company goals is to use company ethics. It was found that ethical disclosure improves the company's stock performance in the long run. Ethics has information value and increases shareholder value, and applied ethics has a positive impact through increasing stakeholder satisfaction.<sup>40</sup>

Based on the depiction over, it can be seen that investigate related to the estimation of *maqāṣid al-sharī'ah* performance is still constrained to the estimation of the number of *maqāṣid al-sharī'ah* values that there are, and to comparative tests between a few banks; existing research that explores the components that influence *maqāṣid al-sharī'ah* execution is still restricted. Therefore, it is fundamental to conduct inquire about that can investigate the variables that influence *maqāṣid al-sharī'ah* performance.<sup>41</sup>

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<sup>40</sup>Hasan Mukhibad, The Role Of Sharia Supervisory Boards in Meeting Maqasid Syariah—Study on Islamic Banks in Indonesia, *EJIF – European Journal of Islamic Finance*, No13, August 2019 p. 4

<sup>41</sup>Ibid, p. 2

The main problem faced by Islamic banks is the lack of socialization between Islamic banks and the public, because many people do not know what Islamic banks are and how the system is, even they argue that the profit sharing system is the same as interest, whereas the profit sharing and interest are very different. Maybe Islamic banks must often hold socialization in the middle and upper middle class and lower middle class society. So that they know what are the advantages of Islamic bank products and what are the benefits after becoming a customer of Islamic banks. In this case, Islamic banks actually have many opportunities, this is because the system they have implemented is different from conventional banks.<sup>42</sup> Especially from the point of view of the application of Islamic law in it. Islamic law (sharia) aims to improve the welfare of the community by ensuring trust, life, intellect, progeny and welfare.

### **The Performance of Islamic Banking with the *Maqāṣid Al-Sharī'Ah* View**

Imam al-Ghazali focuses on humans as subjects of sharia maqoshid.<sup>43</sup> The five aspects of *maqāṣid al-sharī'ah*, namely preservation of religion, preservation of life/soul, mind, progeny and wealth for individuals is completely different when faced with institutions such as banks, which are not real people. To overcome these difficulties, it is necessary to have an additional understanding, one of which is the support of Ibn Ashur's theory of *maqāṣid al-sharī'ah*.

It is important to know the performance of the development of Islamic banks as proof whether Islamic banks have achieved Islamic goals that are not only focused on profit alone, but are more oriented to public welfare in general.<sup>44</sup> The development of the performance of Islamic financial institutions based on the *maqāṣid al-sharī'ah* model can meet this need.<sup>45</sup> The scope covered by *maqāṣid* covers religious, social, personal, economic and intellectual aspects. *Salaf* and *khalaf* scholars agree that every sharia law must have a reason (illah) and also a

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<sup>42</sup> Anton Bawono and Milatunnikmah, Analisis Pemahaman, Produk, dan Tingkat Religiusitas terhadap Keputusan Mahasiswa IAIN Menjadi Nasabah Bank Syariah Cabang Salatiga, *Journal of Muqtasid*, Volume 7 Nomor 1, Juni 2016, p. 31

<sup>43</sup>Ibid, p. 408

<sup>44</sup>Abu Umar Dubyan bin Muhammad ad-Dubyan, *al-Muamalat al-Maliyah Asholatan wa Muashiroh*, (Riyad: Perpustakaan Raja Fahd, 1432, p. 128

<sup>45</sup>Zaki Zamani, Urgensi Maqashid Al-Syariah Dalam Manajemen Perbankan Syariah, *Journal of JES* Volume 1, Nomor 2, Maret 2017, p. 292

purpose (*maqāṣid*), its implementation. The purpose and reason is to be able to build and maintain the benefit of the people.<sup>46</sup>

According to Imam Ghazali all the origins that were built refer to the correct principles to be safeguarding the five, namely to guard their intellect, their souls, their intellect, their offspring and their property by referring to the Qur'an, As-Sunnah, Qiyas and Ijma.<sup>47</sup> In his book, Imam al-Ghazali divides the *maqāṣid al-sharī'ah* and according to him every *maslahah* is sharia. The emphasis he explained was safeguarding five and dividing the level of *maslahah* into three namely *dharuriyat*, *hajiyyat* and *tahsiniyyah*.<sup>48</sup> Every law that contains the purpose of maintaining these five things is called *maslahat*, and every thing that makes the loss of these five elements is called *mafsadah*. From some of the meanings stated above, it can be understood that the meaning of *maqāṣid al-sharī'ah* is the purpose of Allah to determine the laws to achieve the benefit of human life, while also avoiding various damages, both in this world and the hereafter.

Furthermore, Imam al-Ghazali explained again that the shariah *maqashid* is to preserve the religion/faith, soul, mind/intellect, progeny, and wealth.<sup>49</sup> Therefore, for those who kill without reason, a *qishash* punishment is determined, with the aim of preserving oneself and the human soul so as to remain healthy both physically and non-physically. This provision is very rational and fits the purpose of the stipulation of law (*maqāṣid al-sharī'ah*) to bring benefit to the people. Additionally, Prohibition to drink alcohol, because it can damage the mind.

While maintaining the mind is the goal of sharia and with the ability of the human mind can understand everything. Likewise maintaining human dignity, so that hereditary poisoning does not occur. And the last is property, safeguarding it is the goal of sharia. This is seen in the prohibition in taking the rights of others,

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<sup>46</sup>Ika Yunia Fauzia dan Abdul Kadir Riyadi, *Prinsip Dasar Ekonomi Islam Perspektif Maqoshid Syariah*, (Jakarta: Prenadamedia Group, 2104), p. 44

<sup>47</sup>Abu Hamid Muhammad bin Ghazali, *al-Musthofa min ilmi al-ushul*, (Beirut: Dar Ihya al-Turath al-Araby, 1997), p. 179

<sup>48</sup> Jazer Auda, *Maqoshid as-Syariah as Philosophy of Islamic Law*, (London: The International Institue of Islamic Thought, 2007) p. 18

<sup>49</sup>Ibid, p. 18

because it is required to replace other people's belongings, and ordered to cut off the hands of people who steal.<sup>50</sup>

In addition to Imam Ghazali, many modern scholars also discussed the development of the theory of *maqashid sharia*, Muhammad Thahir bin Ashur, he was a scholar from Tunisia who returned to study the *maqāshid al-sharī'ah*.<sup>51</sup> In his *maqāshid al-sharī'ah*, Ibn Ashur emphasis on the first part of the sharia as a legal *maqāshid*. The thing that underlies this thinking is the importance of a fiqh expert in studying the *maqāshid al-sharī'ah* in establishing a law. According to Ibn Ashur, there are three ways to find out *maqāshid al-sharī'ah*, including them:<sup>52</sup>

1. Using the *istiqra* method, namely studying the Sharia by looking at all aspects and points of view. Two methods are used in this method: first, reviewing and examining all known illat laws. By researching and knowing *illat*, *maqoshid sharia* will be known easily. Second, by examining the postulates that have the same illat, until he felt that the illat is the *maqoshid sharia*. In many instances the mention of the order to free slaves shows that one of its shariah maqoshids is freedom.
2. Knowing the arguments of the Qur'an very clearly and firmly.
3. Knowing the arguments of as-Sunnah mutually, both meaningfully and practically.

In the second part, Ibn Ashur discusses the Islamic maqoshid in general. He emphasized that the *maqāshid al-sharī'ah* is based on fitrah which means the rules set by Allah for His creatures and also good and praiseworthy conveniences. The meaning praiseworthy here is that there is no sharia provision that has negative implications and results in danger and damage, so for that reason maintaining human nature there is including *maqāshid al-sharī'ah*.<sup>53</sup>

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<sup>50</sup> Suansar Khatib, *Konsep Maqoshid Syariah: Perbandingan Antara Pemikiran Imam Ghazali dan Imam al-Syatibi*, *Mizani: Wacana Hukum, Ekonomi dan Keagamaan*, Volume 5, No. 1, 2018 p. 58

<sup>51</sup> Ika Yunia Fauzia dan Abdul Kadir Riyadi, *Prinsip Dasar Ekonomi Islam Perspektif Maqoshid Syariah...*, p. 101

<sup>52</sup> Muhammad At-Thahir Ibn Ashur, *Maqoshid Syariah al-Islamiyyah*, (Yordan: Dar al-Nafa'is, 2001), p. 113-115

<sup>53</sup> Ibid, p. 115-117

The formulation of every Islamic banking and financial product is inseparable from the study of *ushul fiqh* and *maqāṣid al-sharī'ah*. The academics and practitioners of banking and financial institutions, it is not enough to know *fiqh muamalah* products and applications of banking products, but he must understand the methodology of *istinbath* and *ijtihad ulama* in formulating and establishing an Islamic legal problem, especially with regard to policies, systems, mechanisms, and Islamic banking products.<sup>54</sup> The provisions regarding *maqāṣid al-sharī'ah* values described above if related to Islamic banking products and operations, can be described as follows:<sup>55</sup>

1. Preservation the religion of the customers. This is realized by using the Qur'an, hadith and other Islamic laws as guidelines in carrying out all operational systems and Islamic banking products.<sup>56</sup> With the existence of DSN and DPS, making the bank's validity in Islamic values and rules more secure.
2. Preservation the soul of the customers. This is realized from the contracts that are applied in every transaction in Islamic banking. Psychologically and sociologically the use of contracts between parties leads humans to respect each other and maintain the mandate given. This is where the value of his soul. In addition, this is also realized from the stakeholders and stockholders of Islamic banks where in dealing with customers are required to behave, dress, and communicate politely and Islamic.
3. Preservation the intellect/mind of the customers and bank. This is manifested by the demand that the bank must always disclose in detail about the product system and it is forbidden to cover up even the slightest item. Here it is seen that customers are invited to think together when making transactions at the bank without being wronged by the bank.
4. Preservation the progeny. This is realized with the maintenance of the four things above, then the customer funds that God willing is guaranteed halal

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<sup>54</sup> Nurnazli, Penerapan Kaidah Maqashid Syariah dalam Produk Perbankan Syariah, *Ijtimaiyya*, Vol. 7, No. 1, Februari 2014 p. 44

<sup>55</sup> Nurnazli, *Op.cit.*, p. 51

<sup>56</sup> *Ibid*, p. 52

will have a good impact for families and offspring who are supported from the savings funds.

5. Preservation the wealth of the customers. This is clearly manifested in every product issued by banks where banks strive to maintain and allocate customer funds properly and lawfully and are allowed to take reasonable profits.

## **Conclusion**

Performance development refers to the fifth aspect expressed by Al-Ghazali and Ibn Ashur in the preservation of religion, soul, mind, progeny and wealth. Imam al-Ghazali and Ibn Ashur stated that the preservation of life is at the stage of one's needs, which makes it a basic goal in protecting one's life/soul. Ibn Ashur redefined this dimension into two elements, they are the preservation of human dignity and the preservation of human rights. Ratio retainers can be used to measure whether Islamic banks meet these elements of this dimension.

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