MASLAHAH IN STAKEHOLDER MANAGEMENT FOR ISLAMIC FINANCIAL INSTITUTIONS

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ABSTRACT

The focus of the stakeholder theory either via the descriptive, the normative and the instrumental is articulated in two main attributes namely the purpose of the firm and the responsibility of the management to the large group of stakeholders. While claiming that the Stakeholder management theory is superior to the Shareholders model, the Stakeholder theory relatively fails to provide strong justification and durable foundational dimension as to the conceptual definition and mechanism of the stakeholders in relation with its operational function in the firm. By contrast, the literatures of stakeholder management from Islamic perspective tend to claim that Islam has laid down a very solid and sound foundation for the stakeholder management theory. The principles of Tawhid, Shura, property rights and contractual obligation as embedded in Islamic teaching provides the basic fundamental of stakeholders rights and its relationship within the firm's organ of governance. In view of these important principles, it is found that there is no proper tool or mechanism to address various issues pertaining to stakeholder management particularly in the aspect of identification of stakeholders, interpretation of stakeholders' obligations, decision making process and in the aspect of giving fiqhi verdicts. This paper strongly advocates the principle of maslahah as an efficient instrument for the stakeholder management and tries to conceptualize it in the current market practice.

Keywords: Stakeholder, *Maslahah*, corporate governance and Islamic financial institutions.

Introduction

History has witnessed the corporate collapses and malpractices of the financial services sector because of weaknesses and defects on the corporate governance practice. The collapse of long established institutions which seem immune or 'too big to fail' such as Lehman Brothers, Bear Fern and others are evidence that there is systemic failure in the existing financial system. While Spence (2008) claims that

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the main factor of the crisis is due to derivative and securities[1], Sachs (2008) and Stiglitz (2008) blames the market deregulation, and Siddiqi (2008) asserts that market exploitation and excessive lending leads to the current phenomena.

According to Chapra (2008), the actual reason for the recent financial crisis is due to a crisis of management in the financial system. He asserts that the inadequate market discipline in financial system resulting from the absence of profit and loss sharing[2], the mind-boggling expansion in the size of derivatives and the 'too big to fail' concept are the primary cause of the crisis. All of these incidents may be attributed to the failure of management to consider the inherent ethical values in business. Therefore, the solution to the crisis must be in the form of management reform.

Although management has in recent years adopted the stakeholder approach by considering the interests of wider groups of stakeholders besides enhancing shareholders value, the reality is still far from ideal. The focus of the stakeholder theory via the descriptive[3], normative[4] and instrumental[5]approaches is articulated in two main attributes, namely, the purpose of the firm and the responsibility of the management to the large group of stakeholders (Freeman et al, 2004, p.364). However, proponents of stakeholder theory have two contrasting views on the latter attribute. The ethical branch of stakeholder theory argues that management must be responsible and accountable to all stakeholders and treat them equally. On the other hand, the managerial branch of stakeholder theory argues that it is impossible for management to treat all stakeholders equally and they need to prioritize their stakeholders based on their significance to the business (see Deegan and Unerman, 2006). This means fulfilling shareholders interest will always be central to the business above everything else. In short, stakeholder theory fails to a certain degree in providing strong justification and sustainable foundational dimension as to the conceptual definition and mechanism of the stakeholders in relation to its operational function in the firm.[6]

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[1] Notional amount of derivatives in 2007 amounted to USD596 trillion and Credit Default Swap represented USD62 trillion whereas the United States GDP only USD13.8 trillion (BIS, 2008). 55 per cent of the USD10.2 trillion loans were securitized by the end of 2006 in which 15 per cent of the securitized loans were subprime (Norges Bank, 2007).. These figures clearly demonstrate the excessive exposure in the securities and derivatives market.

[2] The BIS 78th Annual Report 2008 reported that the primary cause of global financial crisis is due to the excessive and imprudent lending for over a long period (Chapra, 2008).

[3] The nature of the organization, its values, and the relative influence of these on decisions is relevant to predict organizational behavior (Brenner and Cochran, 1991).

[4] Morally significant values are essential for effective management decisions and the ethical management of stakeholder relations makes good business sense (Friedman, 1967).

[5] The instrumental approach focuses on the impact that the stakeholder may have in terms of corporate effectiveness where adherence to stakeholder management principles may result in positive outcomes in terms of financial as well as governance (Barton et al., 1989).

[6] Steinberg (1997) heavily criticizes the stakeholders management theory as he claims that it is incompatible with all substantive objectives of the firm and undermines the concept of private property and accountability.

On the contrary, the literature on stakeholder management from an Islamic perspective has identified several principles which provide for a solid and sound foundation for the stakeholder management theory. The principles of *tawhid* (unity of God), *shura* (mutual consent, consultation and participation in decision making), property rights and contractual obligation as embedded in Islamic teaching, address the fundamental rights of stakeholders and their relationship within the firm's organ of governance. However, the literature falls short in providing the tool or mechanism to address various issues pertaining to stakeholder management, particularly with respect to identification of stakeholders, formulation of the firm's objective, description of stakeholder obligations the decision-making process as well as delivery of *fiqhi* verdicts.

Thus, the aim of this paper is to propose a dynamic model of stakeholder management through which wider stakeholders are endogenised as expected by the Shatibian understanding of *maqasid Al-Shari'ah* (the objectives of Islamic law). The paper attempts to conceptualize the *maslahah* principle as an efficient instrument for stakeholder management in Islamic organizations and Islamic financial institutions (IFIs) by endogenising religio-spiritual values and going beyond the mechanistic interpretation of *fiqh,* which is the prevalent attitude among the *Shari'ah* scholars. Since *maslahah* necessitates a dynamic and value oriented approach for stakeholder management, it should then become an essential foundation around which IFIs and Islamic organizations should be managed.

Maslahah Approach in Stakeholder Management

Several studies have attempted to construct a model of corporate governance from the Islamic perspective. Chapra and Ahmed (2002) emphasize on the notion of equitably protecting the rights of all stakeholders irrespective of whether they hold equity or not. This is supported by Iqbal and Mirakhor (2004) who view corporate governance model in the Islamic economic system as a stakeholder centered model in which the governance style and structures protect the interest and rights of all stakeholders. In the case of corporate governance of IFI, Archer and Rifaat (2007) argue that it should be a stakeholders' value based model because the directors and management owe fiduciary duties of care and loyalty to the shareholders and also other stakeholders, including investment account holders. Nienhaus (2003) states that Islamic corporate governance should be based on value orientation and promoting the principles of fairness and justice with respect to all stakeholders. [7]

He further asserts that objective of the stakeholders model to balance the stakeholders benefit is unworkable as the nature of the firm is to maximize the owner's value.

[7] Interestingly, Nienhaus (2007: 298-301) raises the issue whether the depositors of Islamic banks need representation on boards for more efficient corporate governance supervision as in some corporation in Germany. He concludes, however, that the said notion will not be effective in the case of Islamic banks as they

Although the notion of stakeholder management identified in the above literature seemed similar to the Anglo-Saxon stakeholder theory, the foundation and main arguments on the stakeholder management theory from the Islamic perspective are based on four fundamental principles viz. *tawhid* (belief in one God), *shura* (consultation), property rights and commitment to explicit and implicit contractual agreements, that govern the economic and social behavior of individuals, society and state.

The Islamic perspective of stakeholder management can be further extended to include another three axioms: *adl* (social justice), *rububiyah* (nourishment and directing things their perfection) and *tazkiyah* (growth with purification)[8]. While *tawhid* necessitates vertical justice between the individual and Allah, *adl* aims for horizontal justice or equality between individuals. Thus, *adl* requires that organizations in their internal and external operations must also uphold *adl,* which by definition, expands the stakeholder paradigm even further by endogenising justice as an integral part of the paradigm.

The strength of the Islamic paradigm of stakeholder management further comes from the *rububiyah* and *tazkiyah* axioms by endogenising the rights of every stakeholder and their growth in the management process. These include workers, the environment, society etc., as the corporate organization is expected to facilitate the need of each stakeholder sustaining itself according to their perfection as identified by *fitrah* or natural existence as given by Allah. In addition, individuals in the corporate organization and the corporation itself are expected to grow with purification, or *tazkiyah,* without undermining the natural and social balance as necessitated by *rububiyah.*

It is also important to note that while social good and pursuing these axioms in the operations of organization may be considered as voluntary, another foundational axiom, namely *fard* (obligations) through spiritual accountability and belief in rewards and punishment in the *akhirah* (hereafter), makes it compulsory for Muslims to reinforce these axioms and principles in every aspect of life as a *homo Islamicus* (Asutay, 2007) or *ta'bay* (obedient) human being (Arif, 1989). In other words, spiritual accountability takes the paradigm out of voluntary action and makes it a necessity in pursuing the developmental path to reach *falah* or salvation and happiness. This is again a clear indication of the strength of the stakeholder management paradigm from the Islamic worldview.

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are exposed to competition. This strongly implies that the corporate governance of IFIs is more toward the stakeholders' value model.

[8] Naqvi (1981, 1994, 2003) developed these axioms as part of the Islamic moral economy.

Conceptualizing *Maslahah* in Stakeholder Management

Although Islam has laid down a sound fundamental platform for organizations in managing stakeholder as discussed above, there is always a dilemma when it comes to operationalising it. However, there are many possible instruments or concepts available in Islam to operationalise the aspirational nature of the system as identified above. For example, *maslahah* is considered as one of the most efficient tools to resolve issues involved in stakeholder management. Al Ghazali (1058-1111C.E.) and Al Shatibi (1388C.E)[9] strongly advocate the principle of *maslahah* and Ibnu Ashur (2006) and Kamali (2009) asserts that it is one of the most efficient tools to resolve various issues in contemporary practice. With a view that there may be some misunderstanding on the principle of *maslahah* in general, this paper attempts to conceptualize *maslahah* in the context of stakeholder management.[10] It is expected that the organ of governance in the firm should utilize the *maslahah* based approach of stakeholder management, inspired by the *tawhidi* paradigm and the foundational axioms of *adl, rububiyah and tazkiyah,* when drawing corporate strategies, making decisions and conducting business transaction. It should be noted that in the current practice, the *maslahah* based rationalization is perceived to be the sole prerogative of the jurist in their promulgation of *Shari'ah* rulings. However, in a proactive manner, it may be applied by any individual or group of institutions, including the board of directors and the management, as the rightful stakeholders that actually represent, control and manage the firm.

What is *maslahah,* then? Literally, *maslahah* means 'benefit' or 'interest'. It is always harmonious with the objectives of the *Shari'ah* which requires protecting the five essential values for human well being as defined by Al Ghazali: religion, life, intellect, lineage and property (Ibn Ashur, 2006, p. 118, see also al Amidi, 1983). Being the most famous jurists on the development of *maslahah* and maqasid *Shari'ah*, Al Shatibi views *maslahah* as being concerned with the subsistence of human life, the completion of man's livelihood and the acquisition of what his emotional and intellectual qualities require of him in absolute sense. Al Qarafi, (1998) added a sixth to the existing list of the five essential maqasid, namely, the protection of al-'ird (honour) which is affirmed by al Subki and al Shawkani, (1992). Kamali (2009) further asserts that the purpose of *maqasid Shari'ah* is to

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[9] He is a great Maliki jurist whose greatest work is *al Muwafaqat*. His unique approach to Islamic legal interpretation insists on the spirit of the law rather than just the letter. In this aspect, he views that the primary objective of the *Shari'ah* is to uphold the welfare of the people (Shatibi, 1922). Before him, Al-Juwayni, Al-Ghazali, Al Izz Ibn Abd al Salam, Al Qarafi, Ibn Taymiyah and Ibn Qayyim were the pioneers in the theory development of *maqasid shari'ah* which is closely related with *maslahah.*

[10] Although Rahman (2003) and Dusuki (2008: 391-413) seem to support the notion of stakeholder oriented model where the former provides the pyramid of *maslahah* to ethics and accounting education and the latter as a devise or mechanism to protect rights and interests of various stakeholders, this paper is more concerned on the aspect of conceptualizing and formulating *maslahah* in stakeholders management with special emphasize on the identification of stakeholders, firm's objective, decision making process and *fiqhi* verdicts.

educate the individual, to establish justice and to realize *maslahah* to the people. It should be noted that *maslahah* as a source of law is also synonymously known as *maslahah mursalah* or *istislah* or *maslahah mutlaqah*, refering to unrestricted public interest.

As a general rule, the majority of Muslim jurists agree that *maslahah* cannot be used as a proof in respect of devotional matters and the specific injunctions of the *Shari'ah*. It can only be applied in matters where there is a need for additional interpretation to the text. Muslim jurists formulate three conditions in utilizing *maslahah* as a source of legal rulings; namely, (i) any determination that is to be based on it must be proper and harmonious with the objective of the lawgiver or *maqasid* al *Shari'ah*; (ii) secures benefit or prevent harm; and (iii) *Shari'ah* provides no indication as to its validity or otherwise (Kamali, 1991, p.235 and see also Auda, 2010, 1pp.36-140). With respect to the first condition, the most important element of *maslahah* is the *maqasid* al *Shari'ah.* The principle of *maslahah* can only be invoked in the event that it meets the objective of *Shari'ah*. *Maslahah* aims at preserving *maqasid* al *Shari'ah* and failure to do so may lead to harm or *mafsadah.*[11] As for the second feature of *maslahah*, it is imperative to understand the element of harm. As a simple explanation, anything that violates the five essential values is considered as *mafsadah*. However, it is important to understand and appreciate the degree of *maslahah* and *mafsadah*. The third condition guarantees that *maslahah* is only applicable in the event that there is no indication or explicit text on certain issue, which needs further deliberation.

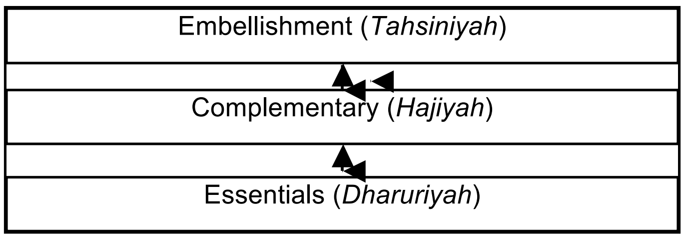
In terms of classification, there are four main categories of *maslahah,* namely, according to the needs, textual authority (*maslahah mu'tabarah* (accredited *maslahah), maslahah mursala*h (unrestricted public interest) and *maslahah mulgha* (discredited *maslahah*))[12], with reference to its relationship with the community or individual (*juz'iyyah* (particular *maslahah*) and *kulliyah* (universal *maslahah*)) and according to the degree of evidence (*qat'iyah* (certain), *zanniyah* (probable) and *wahmiyah* (illusionary) (Ibnu Ashur, 2006, p. 117). The discussion nevertheless concentrates on the first category *maslahah* which is categorized into different

[11] Chapra (2008) criticizes that the *maqasid Shari'ah* are not taken into consideration by the *Shari'ah* scholars while giving *fiqhi* verdicts. Bakar (2007), a renowned *Shari'ah* scholar who sits on numerous *Shari'ah* boards, claims that the *Shari'ah* boards of IFIs have not only considered the element of *maqasid Shari'ah* but have already implemented it in their various rulings. While it is unfair to generalize that the *Shari'ah* boards have failed to take into account the *maqasid Shari'ah*, this criticism has its own basis which is based on the general observation of the current Islamic finance practices where it seems to neglect the aspect of social obligation and too much concentration on profit maximization.

[12] *Maslahah mu'tabarah* (accredited *maslahah)* is definitive and no longer open to debate. *Maslahah mursala*h (unrestricted public interest) has been validated after the divine revelation came to an end and is designed to prevent *mafsadah. Maslahah mulgha* (discredited *maslahah*) refers to *maslahah* which has been nullified either explicitly or by indications in *Shari'ah* (Kamali, 1991: 239-240).

degree of *maslahah* namely, *dharuriyah* or essentials (it must be protected and promoted)[13], *hajiyah* or complementary (supplementary to the five essential values) and *tahsiniyah* or embellishment (by having it will lead to improvement and the attainment). To assist understanding, Figure 1 illustrates the degree of *maslahah* and Table 1 offers a basic formula for the application of *maslahah* in the event of conflict amongst the three categories of *maslahah* i.e. *dharuriyah* (M_i), *hajiyah* (M_{ii}) and *tahsiniyah* (M_{iii}).

Figure 1: Degree of *Maslahah*



From these three divisions of the *maslahah*, Al-Shatibi formulates a theory on the operational aspect of *maslahah*. At this point, he extracts five rules of *maslahah* (Masud, 1995):

(i) Essentials as the foundation of *maslahah*;
(ii) The disruption of essentials necessitates the absolute disruption of other objectives, known as partial disruption;
(iii) Partial disruption of a complementary or embellishment does not necessitate the disruption of essentials;
(iv) An absolute disruption of complementary or embellishment disrupts the essentials;
(v) The preservation of complementary and embellishment is necessary for the maintenance of essentials.

Table 1 illustrates the decisions to be made according to those rules when management is faced with a dilemma in making decision about its operations and investments. The actualization or endogenising of *maslahah* is achieved at the end of the process.

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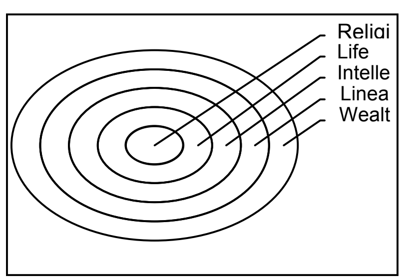
[13] For example, we may refer to *maslahah* in the case of uncultivated land. Abu Yusuf, in the case of Kharaj (taxation and fiscal problems), introduced new land policy where it provided that whoever revived a land became its legitimate owner subject to the permission from the caliph. However, in the absence of permission from the caliph, the ruler may acquire the land, which is contrary to the *sunnah* of the prophet. Based on the principle of *maslahah dharuriyah,* when a conflict of interest or competition over the land exists, Abu Yusuf has made fresh *ijtihad* based on the doctrine of public interest (El-Ashker and Wilson, 2006: 189).

Table 1: Formula for *Maslahah* in the Event of Conflict Between *Dharuriyah, Hajiyah* and *Tahsiniyah*

Formula	Illustration	Explanation[14]
Mi vs Mii= Mi	Mr. A as the board of director in company X has to make decision either to renovate one of the offices in order to enhance the business but at the same time that cost could be allocated to avoid the retrenchment of the employees.	Mr. A shall choose the second option as it involves *maslahah* dharuriyah.
Mi vs Miii= Mi	Mr. B as the Shareholder has a certain amount of fund ready to be invested while the country is facing the economic recession. He has two options either to locate the money in food or fashion industry.	Mr. B shall choose to invest in the food industry as it may generates production of more food for people rather than fashion industry which is less important and unnecessary. Wasteful behavior is a sinful act in Islam[15].

Let us identify *maslahah* within the parameter of stakeholder management in the corporation. As the nature of the firm is commercial in character, the possible main area of *maslahah* is protection of wealth or property and also the actualization of other axioms as stated earlier, and this is illustrated in Figure 2:

Figure 2: ***Defining Maslahah***



[14] It is important to note that in certain circumstances each degree of *maslahah* can be elevated from hajiyah to dharuriyah or even can be downgraded from hajiyah to tahsiniyah. The above explanation only illustrates the general application of *maslahah*.

[15] Allah says in al-Quran, 7:31 " O Childen of Adam! Wear your beautiful apparel at every time and place of prayer, eat and drink, but waste not by excess, for Allah loveth not the wasters.

Figure 2 shows the priority of *maslahah* where the most essential aspect to be protected is religion, which is located at the core of the circle. This is followed by life, intellectual, lineage and lastly wealth. It is contended that *maslahah* in stakeholder management is mainly concerned with the protection of property as it involves commercial activities and creation of wealth. The theory of stakeholder management therefore must take into account the duty to protect the interest and right of stakeholders such as protection of minority and majority shareholders, welfare of the employees, interest of the public and preservation of the environment. Islam has strongly advocated that no one should transgress or acquire any kind of properties without legitimate means and reasons as Allah says 'And do not eat up your property among yourselves for vanities nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of other's people' (Al Quran, 2: 188). While Islam acknowledges freedom of enterprise and right to make profit, certain unlawful things such as *riba* (interest), *gharar* (uncertainty), excessive speculation, *maysir* (gambling) and any other unlawful increase of wealth which might cause damage to the institutions and the whole community were prohibited. In this regard, stakeholder management from the Islamic point of view emphasizes the duty to uphold *maslahah* for the rights, interest and wealth of participatory and non participatory stakeholders in the institutions.

After identifying the core area of *maslahah* in stakeholder management, another issue that arises is related to how to identify the *maslahah* in the context of a firm. In this regard, *maslahah* can be classified into the state as the regulator, shareholders, managers, employees, customers and communities and environment in the light of the above identified principles and axioms.

Figure 3: Stakeholders' *Maslahah* in Wealth Management

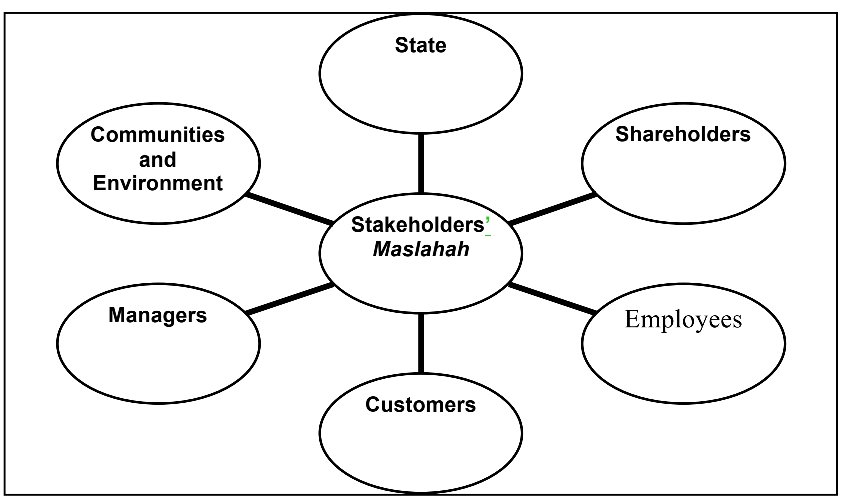


Figure 3 presents six main groups of stakeholders' *maslahah* in the corporation. To justify this, Iqbal and Mirakhor (2004, p58) formulate two tests to determine if the individual qualifies as a stakeholder. Firstly, whether the individual or group has any explicit and implicit contractual obligations, and secondly, whether the property rights that are at risk is due to business exposure of the corporation. All the six groups are considered as the rightful stakeholders to the firm as they are directly or indirectly involved in the firm's business and hence, they are all required to protect the interest and *maslahah* of each other. This is in line with the saying of the Prophet: 'A Muslim is the one from whose hand others are safe' (Sahih Bukhari, Volume 1, Book 2, Number 10). Table 2 presents the possible *maslahah* and *mafsadah* of these stakeholders.

Table 2 illustrates the possible harm and potential *maslahah* that need to be looked into by all stakeholders. As a simple explanation, shareholders are more concerned on the return of their investments while managers, as agents to shareholders, expect monetary and non monetary compensation for their services. Employees are interested on work benefit and salary while, customers are concerned with good product and services and fair and non discriminatory treatments. On the other hand, depositors are interested in the risk management practices that will help to protect their interests and the community as one of the stakeholder group hopes that there will be no activities which may harm the environment and cause economic instability in general, as necessitated by the *tawhid, adl, rububiyah and tazkiyah* axioms. Another important stakeholder group is the state which is expected to facilitate regulation through its regulatory activities and presence in the market to ensure economic stability.[16]

Table 2: Example of Stakeholders' *Maslahah* and Potential *Mafsadah*

Stakeholders	***Maslahah***	***Mafsadah/Harm***
Shareholder	▪ Wealth maximization; ▪ Satisfactory earnings per share; ▪ Dividends; ▪ Above average return on investment; ▪ High integrity, efficiently and effectively managed company; ▪ Outstanding corporate reputation and brand; ▪ Excellent continuous growth.	Loss/ bankruptcy; Unpaid dividend.

[16] Levine (2003) views that the main implications of the state as a stakeholder will be to regulate the identification of people owning and controlling banks and limiting power concentration in the economy as well as conduct other regulatory activities that may restrain competition in banking through various restrictions.

Stakeholders	***Maslahah***	***Mafsadah/Harm***
Managers	▪ Monetary and non-monetary compensation; ▪ Commitment to claims of the contract.	Retrenchment and unemployment.
Employees	▪ Salary and work benefits; ▪ Opportunity for development and promotion; ▪ Job security and safety; ▪ Overall great place to work with good reputation; ▪ Staff development and training.	Retrenchment and unemployment.
Customers	▪ Product and services; ▪ Fair and non-discriminatory treatment; ▪ Cost-effective services; ▪ On-time delivery; ▪ Safety and privacy; ▪ Customized service;	Bankruptcy and insolvency.
Depositors	▪ Repayment of deposits at maturity on the agreed terms; ▪ Protection of their interests.	Loss/ Unpaid deposits.
State As Regulators	▪ Compliance with the laws and regulation.	Economic instability.
Communities and Environment	▪ Free from any pollution; ▪ Conservation of environment and helping it to grow in its natural harmony; ▪ Noise management; ▪ Job creation, local hiring; ▪ Giving back to society and communities where we operate through charitable donations; ▪ Expectation to respond to disasters and be a delivery vehicle for people to make their own contributions to disaster relief.	Pollution and environmental disaster.

In order to test whether these *maslahah* categories are acceptable, there are five conditions that need to be fulfilled: (i) it must be genuine (*haqiqiyah*) and not specious *maslahah* (*maslahah wahamiyah);* (ii) it must generally be able to securebenefit and prevent harm to the people as a whole; (iii) it must not be in conflict with a principle or value which is upheld by the *nass* (a known, or clear injunction) or *ijma'* (consensus); (iv) it must be rational and acceptable to people or is sound intellectually; and (v) it must prevent or remove hardship or *mafsadah* (Kamali, 1991, p.240-242. See also al Raysuni, 2005, al Alwani, 2001 and Auda, 2010). As a guideline in applying the principle of *maslahah* in daily operation of business, some of the legal maxims *(qawaid fiqh)* in relation with prevention of harm can be utilized. Below are the relevant legal maxims, which are originally taken from the *majallah al Ahkam Al Adliyah* (The Mejelle, 1876):

(i) General or unspecified harm should be given priority to specific harm;
(ii) Any harm, which occurs, need to be redressed;
(iii) What is perceived as greater harm should be avoided even if it results in inconsequential harm;
(iv) Avoidance of harm takes precedence over the promotion of interest;
(v) Harm cannot be ended by its like;
(vi) Repelling harm is preferable to attaining benefit;
(vii) Harm must not be sustained.

This paper, hence, attempts to illustrate how *maslahah* can be applied in the situation of conflict with *mafsadah* by applying all of the above legal maxims. The following illustration reflects how Islam stresses the importance of considering *maslahah* on the part of managers and other stakeholders. Table 3, therefore, depicts the application of *maslahah* in the cases where there is conflict with *maslahah*.

Table 3: Application of *Maslahah* in the event of Conflict with *Mafsadah*

Formula	Illustration	Explanation
M> vs F> = F>	The management of the firm has two options either to terminate 50 per cent of its employees and therefore avoiding closure of the company or to retain all of them and it will lead to insolvency.	In this case the management shall make its decision, which may prevent greater harm to the company and other employees i.e. to proceed with retrenchment strategy.
M< vs F< = F>	The management is planning to restructure the company by offering voluntary separation scheme.	*Maslahah* in this exercise is that it may reduce the cost for the company while at the same time it may cause *mafsadah* to the employees. *Mafsadah* will then prevail over *maslahah*. Nevertheless, if this kind of

Formula	Illustration	Explanation
		mafsadah can be mitigated by offering appropriate compensation to the employees in which makes *maslahah* to overwhelm the *mafsadah*, such restructuring is then allowable.
M< vs F> = F>	The management is proposing a new business plan to invest in nuclear power plant to generate electricity, which may create huge profit in the future.	Although *Maslahah* to generate huge profit is permissible but the consequence of the project may lead to the disruption to the environment. The principle of *la dharar* must be observed as Islam prohibits any destructive use of human and natural resources.
M> vs F<= M≥	The Company A has to terminate the contract with company B for failure to comply with the terms and conditions in the agreement.	In this case, the Company A may terminate or not the contract by considering the degree of *Maslahah* and *mafsadah*.

Table 3 demonstrates three formulas on the application of *maslahah* in the event of conflict with *mafsadah* in the light of the identified legal maxims. It further illustrates and explains the operational aspect of *maslahah* within the context of stakeholder's management. The *maslahah* based approach formulated suggests that *maslahah* should become an essential consideration to resolve any issues involved in the management process. It is also important to note that the foundational axioms of *adl, rububiyah and tazkiyah* should also be the integral part of the *maslahah* based approach in order to reach *al falah*. The application of *maslahah* based approach would then be able to enhance the old paradigm by endogenising religio-spiritual values in stakeholders' management.

Application of *Maslahah* Based Approach in Stakeholder Management

As a general rule, there are three prerequisites for the application of *maslahah* in stakeholder management: firstly, identification of the characteristics of *maslahah* and *dharurah;* secondly, identification of the core qualifications of bodies or individuals proposing the parameters; thirdly, identification of the *maqasid* to ensure adherence to the parameters of *maqasid* (Bouheraoua, 2009). This section attempts to illustrate the efficiency and usefulness of *maslahah* based approach in five stakeholder management aspects namely identification of stakeholders, formulating the firm's objective, determination of stakeholders obligation, tools for decision making process and consideration for *fiqhi* verdicts.

a) Identification of Stakeholders via *Maslahah*

It is vital for the company to protect the interest of its stakeholders in order to sustain its existence. Nevertheless, there is problem with the issue of identifying and defining who the rightful stakeholders are, as there are numerous studies attempting to define and identify the stakeholders from various perspectives. Freeman (1984, p.46) defines stakeholders as 'any group or individual who can affect or is affected by the achievement of the organization'. On the other hand, Mitchell et al. (1997, p. 854) identifies stakeholders by their three attributes, namely, the power to influence the firm, the legitimacy of the stakeholder's relationship with the firm and the urgency of the stakeholder's claim on the firm. These wide definitions have expanded the scope of stakeholders to include employees, customer, supplier, regulators, creditors, competitors and environment. Ciancanelli and Gonzalez (2000) endeavour to categorize the stakeholders into four major subsets of interested parties, namely, owners, managers, depositors, borrowers and regulators.

While the categories of stakeholders are of equal concern to conventional firm, there are other group of stakeholders that are specific to Islamic firm and IFIs, i.e. the *Shari'ah* board, investment account holders, the communities and the environment. The spirit of Islam guarantees that all rights of stakeholders must be protected, respected and safeguarded as explained above through the axioms. In this regard, Islam obligates the duty to promote and uphold justice and equity to all through the *fardh* (obligatory acts) and spiritual accountability axioms, as Allah says: 'O you who believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just; that is next to piety; and fear God. For God is well acquainted with all that ye do' (Al Quran, 5:8). This verse strongly advocates that every single organ of governance in the firm has a duty to observe and respect the rights of all stakeholders equally. The stakeholders do not necessary refer to the shareholders per se or to those who have active participation in the decision making process, but includes non investor or non owner stakeholders, i.e. any party who has direct or indirect participation in the corporation. In short, it consist of shareholders, BOD, management, employees and customers who have direct participation in the business, while the state as regulators and general public as the directly impacted parties, are also the rightful stakeholders who have indirect relationship to the corporation.

The principle of *maslahah* provides a strong theoretical foundation for identifying stakeholders. For instance, in the case of a bank planning to finance an industrial developmental project that may affect the environment. Although, the community and the environment itself are not part of the governance structures of the company, they are actually qualified stakeholders since the development may create harm or *mafsadah*. This is in line with what Allah says: 'Mischief has appeared on land and sea because of (the meed) that the hands of men have earned, that (Allah) may give them a taste of some of their deeds: in order that they may turn back (from Evil)' (Al Quran, 30: 41). Therefore, any developmental plan must take into account *maslahah* of the community and the environment, as guided by the axioms. Along with shareholders and managers who are the essential portion of governance structures, regulators also have an indirect stake in the firm. As such, regulators are closely concerned with the performance of the firm in order to monitor closely the functioning of the whole economic system failing which may lead to economic instability[17].

b) *Maslahah* Based Approach in Formulating the Firm's Objective

It is always the main function of the BOD to define the firm's objective, to agree strategies and plans for that purpose, to establish the firm's policies, to appoint the management, particularly the Chief Executive Officer, to monitor and assess the performance of the management team and to assess their own performance (Cadbury, 2002, p.33-47). On the other hand, management has the role to maximize the shareholders value by implementing the vision laid down by the BOD (Sundaram and Inkpen, 2004). Therefore, the BOD is the organ who is responsible for defining, constructing and formulating the firm's objective. In this respect, it is necessary and useful to analyze how *maslahah* can be used as a tool to determine the objective of the corporation.[18]

Although Islam acknowledges the right to gain profit via the principle of property rights, this practice nevertheless should be balanced with the principle of *maslahah* through a social and spiritual filter. When discussing the issue of governance in the corporation, Choudhury and Hoque (2006) states that it actually involves decision making within the *Shari'ah* rules and principles. Since *Shari'ah* denotes that every individual has obligation towards others, the firm as *shahsiyah i'tibariyah* (juridical person) also has responsibilities upon general stakeholders particularly the

[17] Gills (2008) claims that policies which promote the neoliberal economic globalization, market fundamentalism and financial deregulation, are the main contributors for the global financial crisis.

[18] The shareholders value model of corporate governance considers the objective of the firm as maximizing the shareholders wealth (Sundaram and Inkpen, 2004) while the stakeholder theory claims that the ultimate aim of the corporation must take into account the legitimate interests of whole groups and individuals who can affect or be affected directly or indirectly by the organisation's activities (Freeman, 1994). Islam, on the other hand, puts *maqasid shari'ah* as the ultimate aim of the firm while at the same time acknowledges the individual right to make profit.

communities as a whole. In reorienting the objective function of the firm from neo classical economics understanding, therefore, the corporate objective should not be based solely for the purpose of maximizing the profit. As articulated by most Islamic economists, a new institutional economic perspective in Islam must be developed to facilitate this. Accordingly, the principle of *maslahah* should be endogenised as a foundational framework to formulate the objectives of the firms. This is important particularly considering that despite numerous factors and primary causes of the current global financial crisis, undeniably the firms' focus on maximizing the shareholders value contributed to the current economic instability.

As a pragmatic approach, Khan (2007) asserts that there should be a distinctive Islamic corporate objective as opposed to the profit and utility maximization based conventional objectives. He further concurs that the firm's objective should not only be motivated by profit maximization but should also aim to maximize social welfare function. This can be materialized through involvement in community banking, responsible and ethical finance and corporate social responsibility initiatives (Asutay, 2007). Khan's idea is relatively harmonious with the *maslahah* based approach as community represents one of the main important stakeholders. With a view to build new paradigm to the corporate objective towards *maqasid Shari'ah*, the BOD or the management have responsibilities to formulate the firm's objective that will be based both on profit and social welfare maximization by identifying and acknowledging *maslahah* of the stakeholders.

c) *Maslahah* Based approach as Determination for Stakeholders Obligation

The *maslahah* based approach can be used to determine the roles and obligations of stakeholder, as each stakeholder is a part of the nexus of implicit and explicit contract that constitutes the firm[19]. Since the BOD and the management are in the position to represent the firm and have direct control over the decision making process, they are responsible to define the firm's objectives and policies and to make strategic decisions on behalf of all other stakeholders. Therefore, it is incumbent upon the BOD and the management to consider the overall *maslahah* of each stakeholder in the manner that is acceptable by *Shari'ah*.

The BOD and the managers are the key players in the formal decision making structure of the firm. As such, they own fiduciary duties towards other stakeholders. With regards to shareholders, the BOD and the management are responsible to meet their expectation in the form of wealth maximization, satisfactory earnings per share, dividends, and providing above average return on

[19] The term stakeholder theory of the firm considers managers as the agent of the other stakeholders as they have specific contractual relationship with the firm and hold direct control over the overall affairs of the firm (Hills and Jones, 1992: 134).

investment. With respect to employees, the firm is expected to provide reasonable salary and work benefit, job security and safety, and a pleasant working environment. In relation to the depositors, the firm must be able to ensure repayment of deposits at maturity on the agreed terms. The firm also has obligations upon regulators to comply with the laws and regulation. In the case of obligations towards its customers, the firm is responsible to provide its customers exact information about its products, type, origin and cost of production.

Besides those obligations, firms also have social obligation towards the communities. Asutay (2008) maintains that Islamic finance has failed to realize the very reason of its existence in providing socio economic development for the larger parts of the Muslim world and communities. One of the root causes of the so called social failure is due to the corporations neglecting the *maslahah* based approach in fulfilling its social dimension. For instance, in relation to social lending, the percentage of *qard hasan* (benevolent loan) and microfinance is at a negligible level in Islamic finance sector (Asutay, 2007). Taking into account that social lending is considered as part of *maslahah* responsibilities towards the communities, the corporation, particularly financial institutions, may need to address this issue by increasing the percentage of benevolent loan and microfinance in its financing portfolio.

The problem faced by the financial institutions in offering more social lending is that the resources are inadequate and also due to higher risk and expenses involved in such financing (such as the moral hazard and asymmetric information). They cannot be forced to offer something which may expose them to excessive risk and additional expenses. Therefore, for the purpose of *maslahah* of general public who are indirect stakeholders, managers in cooperation with religious authority may introduce a new instrument to address this issue. In this instance, a proposal by Chapra (2008) is to subsidize the amount of financing partly from *zakah and awqaf* funds for those borrowers who are eligible for *zakah* and this is actually harmonious with the principle of *maslahah*. This nevertheless needs a fresh *ijtihad* (reasoning) by the religious authority on the permissibility of subsidizing the financing facility by utilizing *zakah or waqf* fund. On the part of managers, they should consider this type of financing due to *maslahah* even if it will not generate profit compared to other form of financing. This demonstrates that the utilization of *maslahah* by both managers and religious authority may help contribute towards sound and solid decision that is made for the benefit and interest of wider group of stakeholders.

While this paper argues for the firm or BOD to adopt the *maslahah* based model as a prescriptive model, another important issue that needs to be addressed is how to ensure that it is adopted. It has been suggested that reinstitutionalization of *hisbah* (a traditional regulative institute) in an effective manner would help to ensure the efficiency of *maslahah* based approach in stakeholders model of governance. The governance committee at the BOD level may play its role in ensuring that decision making process takes into account stakeholders' interest through *maslahah* based approach. In applying this to the case of IFIs, *Shari'ah* Board is the ideal institution that may specifically advise and supervise the extent of IFIs adherence to *maslahah* based approach in stakeholder management by adopting a dynamic and non mechanistic *fiqh* (Islamic jurisprudence) based attitude. It is important to state that currently *Shari'ah* scholars have adopted a mechanistic and rationalistic interpretative attitude towards IFIs related judgments, which may not necessarily consider or endogenise the larger perspectives on stakeholders interest. Therefore, a consequentialist attitude by *Shari'ah* scholars by endogenising value oriented understanding beyond mechanistic attitude through *maslahah* is essential to fulfill the religio-spiritual expectations from IFIs as identified by *maqasid* al Shariah and *maslahah*. *Hisbah* can play a crucial role in ensuring that stakeholders' interests are properly established. Therefore, both Governance Committee at the BOD's level and *Shari'ah* board in IFIs would be able to play their functions as the internal institution of *hisbah* within the context of the firm through the internalisation of values and rights.

d) *Maslahah* as a Tool for Decision Making Process

The decision making process refers to the process of *shura* in the Islamic corporate organisations. In the context of financial institutions in general, the decision making process is made by the BOD or the management and in the case of IFIs, it involves another layer of governance, namely the *Shari'ah* board. Unlike conventional banks, there are two main institutions involved in the decision making process of IFIs, namely, the *Shari'ah* board and the other constituents of the *shura* group. In determining the scope of *Shari'ah*, the *Shari'ah* board will play a crucial role to ensure that all activities of the institution are in line with the *Shari'ah* principles. In addition, the shareholders also play a big role as active participants and conscious stakeholders in the process of decision and policy making framework by considering the interest of all direct and indirect stakeholders rather than maximizing their interest or profit alone. All of these processes are centered toward fulfilling the ultimate objective of Islamic moral economy of complementing the private and social goals via upholding the principles of justice and distributive justice.

Since *maslahah* necessitates that all the stakeholders have rights in the decision making process, it raises another issue of who has the actual right to make decision. At this point, this paper views that there are two types of decision making process involved: commercial based and *Shari'ah* based decisions. The former refers to the managers who are the only group of stakeholders to enter into contractual relationship with all other stakeholders. Managers are also the only group of stakeholders with direct control over the decision making apparatus of the firm. Therefore, it is incumbent upon the managers to make decision. In short, the unique role of managers suggests that they are agents of corporation and other stakeholders. As regards to *Shari'ah* based decision, it refers to the roles of the *Shari'ah* board as supervisory and advisory body in relation to *Shari'ah* matters. While the management can make decision based on commercial interest, the *Shari'ah* board is expected to deliberate *Shari'ah* rulings on the basis of Islamic law of jurisprudence. As an illustration as to how *maslahah* can be used as a tool for decision making process, it would be useful to refer to the issue of delay in payment[20].

From the judicial perspective, there are two views on the position of compensation in the case of delay in payment, i.e. either it is permissible or it is not. Hammad (1990) clearly mentions that the banks can only get what it agreed before the finalisation of the contract, i.e. the selling price, while Al Dareer (1985) arrives at a lenient conclusion where the amount of compensation can only be imposed to the extent of actual profit lost (as cited in Siddiqi, 2004, p.4). Siddiqi (2004, p.3-4), on the other hand, tends to enhance the role of the state by suggesting that the financier should seek compensation from the special fund initiated by the government in which all the fines for delay go. In view of the differences in opinions, the *Shari'ah* board is more concerned on the interpretation of the relevant texts and whether a particular analogical reasoning is acceptable in making any of its decision. In addition, the *Shari'ah* board may also resort to the *maslahah* based orientation as a basis for its *Shari'ah* pronouncement. In the case of *mafsadah* overwhelming *maslahah*, the *Shari'ah* board may then rule that the compensation for delay in payment is permissible.

While the *Shari'ah* board is more concerned on the methodology and mechanistic aspects of Islamic law or *usul fiqh* and even *maslahah*, the management, on the other hand, may opt to apply the *maslahah* based approach. Let us hence identify the *maslahah* involved in the case of delay in payment from the management perspective. The identified *maslahah* refers to *maslahah* of individual where it may create additional cost for him/her on top of the financing facilities. At this point, the degree of *mafsadah* to the financial institutions is expected to overwhelm the *maslahah* of the customer because the delay in payment may increase the

[20] Zarqa and Elgari (1991) have listed eight opinions on how to deter the delinquent in the case of delay in payment. Hammad (1985) insists only court of law has the authority to punish the delinquent. Zarqa (1985) views that the amount of fine must be decreed by a court. Siddiqi (2004) suggests that the compensation is permissible with condition that it must be put to special fund under the purview of the state. Al- Dareer (1985) and Abdul Barr (1990), on the other hand, view that a fine could be imposed as a deterrent but it should not be excessive.

percentage of non performing financing (NPF), which creates financial liabilities to the financial institutions as a whole. In the case of large volume of defaulters or NPF, the bank may face serious problems even insolvency, which may lead to instability of the economy. This can be evidenced by the closure of Ihlas Finance House, a Special Finance House or Islamic bank in Turkey in 2001 (Ali, 2007). It is submitted, however, the management shall also have the obligation to determine the amount of compensation that they intend to impose upon the defaulting customers to be based on the principle of *maslahah*. It should not create burden to the defaulters as it only acts as deterrent to punish the delinquent and not to be considered as a side income for the financial institutions.

e) *Maslahah* Based *Ta'lil* (ratiocination) as a Consideration for *Fiqhi* Verdicts

It is imperative for the *Shari'ah* board to take into account the *maslahah* based approach on top of *illah* (legal cause) in deliberating the *Shari'ah* rulings with the objective of establishing the requirements of *maqasid Shari'ah* in an aspirational sense. The understanding and knowledge on *maslahah* upon certain issues that need deliberation may contribute towards solid and sound *fiqhi* verdicts especially in resolving the unresolved *fiqhi* issues. At this point, the authors strongly advocate the application of *maslahah* based *ta'lil* by going beyond the mechanistic interpretation of *fiqh* as a consideration for any *fiqhi* verdicts by any fatwa institution[21]. This paper provides two illustrations as to how *maslahah* based *ta'lil* resolves the unresolved *fiqhi* issues. Unlike the general understanding of *fiqh* to be based on more technical concept of *illah*[22], these two issues vividly show that *maslahah* based *ta'lil is* able to facilitate the scholars with an efficient and reliable tool as a consideration for contemporary *fiqhi* verdicts.

Illustration 1: *Maslahah* Overwhelms the Elements of *Mafsadah* in *Ijarah Sukuk*

Formula: $M> \text{ vs } F< \; = M>$

[21] Ibnu Rushd, for instance, enlarges the scope of *riba* by providing juristic explication of *maqasid Shari'ah* to justify its prohibition besides the *illah* (El- Gamal, 2000). In this regard, El- Gamal (2000) views that economic argument of pre commitment and economic efficiency factors could also be the consideration of the prohibition of *riba*. This is affirmed by Balz (2008) who in fact further suggests that Islamic finance, as part of the stakeholder's management must not only be concerned about Islamic law but also the ethical component of it. This implies that it is possible and in fact commendable to promulgate *Shari'ah* rulings based on *maslahah* and going beyond the technical aspect of *fiqh*.

[22] Muslim jurist in the early period of history of Islamic jurisprudence applied *maslahah* based on *ta'lil* (wisdom or *hikmah*) with regard to the identification of *illah* in *qiyas* (analogy) by the precedent of companions and leading imams. However, at a later stage, the jurists of the Hanafi and Shafi'is schools departed from the *maslahah based ta 'lil* approach and introduced the more technical ratiocination known as *illah* (Kamali, 1996: 26-27).

In February 1988, the Fiqh Academy of the Organization of Islamic Conference held in its decision number (5), 1988:

> "Any collection of assets can be represented in a written note or bond, and the bond or note can be sold at the market price provided that the composition of the group of assets, represented by the security, consists of a majority of physical assets and financial rights, with only a minority being cash and interpersonal debts".

In reflecting on this, Kamali (2009) views that the *Shari'ah* ruling on the permissibility of_*ijarah* bond is based on its *maslahah* oriented benefit. He asserts that the validity of an Islamic leasing instrument (*ijarah*) may amount to the level of *dharuriyah* as it provides facility for the general public to finance basic necessities such as housing and transportation, which is harmonious with *maqasid Shari'ah*. He summarized the nature and rational for the said *maslahah* as illustrated in Table 4:

Table 4: Ratiocination Based on *Maslahah* and *Mafsadah* for *Ijarah Sukuk*

Maslahah	***Mafsadah***
▪ *Ijarah* enables the instrument without any need for collaterals; ▪ The possibility of misuse of funds and assets is minimized; ▪ *Ijarah* is also a flexible facility since the lease payments can be short-term or long-term. Financing and pricing can be on a fixed or floating basis; ▪ Enforceability of the lease-related contracts in the Gulf region and Southeast Asia; ▪ Resource mobilisation and liquidity management as well as providing stable sources of income for investor.	▪ Liquidity problems; ▪ Increase the cost of financing since other types of facilities require collateral.

The above table shows that *maslahah* overwhelms the element of harm in the case of *ijarah sukuk* issuance. This instrument may help the financial institutions to increase its liquidity since it provides stable sources of income. The element of *mafsadah* for the financial institutions would be when the IFI is unable to manage its liquidity, which may lead to serious problems as demonstrated by the closure of Ihlas Finance House in Turkey in 2001 (Ali, 2007). Moreover, liquidity management is unique to Islamic financial institutions due to the fact that most of the conventional instruments used for liquidity management are either interest based or have structures that are not suited to Islamic finance. Unlike the conventional banks that can subscribe to the government securities to guarantee its liquidity, the IFIs have to find sound *Shari'ah* compliant instruments for its liquidity management. It is essential for the IFIs to meet their liquidity needs and obligations in order to ensure the smooth running of their businesses which is considered as the rightful *maslahah dharuriyah*. Based on this *maslahah, ijarah sukuk*is deemed necessary and hence permissible for the sake of ensuring liquidity management in the IFIs.

Illustration 2: *Mafsadah* Overwhelms *Maslahah* in *Tawarruq* Financing Facilities

Formula: *M< vs F> = F>*

Tawarruq, as a financial instrument mainly for monetary liquidization and consumer financing, has been practiced since 2000. It was pioneered by the National Commercial Bank of Saudi Arabia and then followed by other IFIs in the Gulf and Malaysia[23]. With regards to the status of *tawarruq* instrument, despite its permissibility based on *Shari'ah* pronouncements made by the respective *Shari'ah* boards including the AAOIFI, Siddiqi (2007), on the other hand, is of the view that it is identical to interest based loans both from the functional and macroeconomic perspective and concludes that 'a financial instrument whose *mafasid* (harms) are much greater than *masalih* (benefits) cannot be characterized as *Shari'ah* compliant'. To support this, Kahf (2004) argues that *tawarruq* is worse than the practice of interest based loan legally and economically[24]. Therefore, it would be an interesting exercise to see *maslahah* and *mafsadah* positions in *tawarruq* as a financing facility, as articulated by Siddiqi (2007) in the Table 5 below:

Table 5: Ratiocination Based on *Maslahah* and *Mafsadah* for Deposit Product Based on *Tawarruq*

Maslahah	*Mafsadah*
▪ Customer: Fixed profit; ▪ IFIs: Source of money for investment; ▪ Liquidity.	▪ Creation of excessive debt; ▪ Exchange of money with more money in future, which is unfair in view of the risk and uncertainty involved; ▪ Debt proliferation, which is likely to gambling and speculation; ▪ Greater instability in the economy;

[23] Other names for *tawarruq* financing facilities include *al-taysir by* the National Commercial Bank, *mal* by the SABB, *dinar* by the Al-Jazira Bank and *tawarruq al-khair* by the Samba Financial Group (Al-Shalhoob, 2007: 2).
[24] The Fiqh Academy of the Muslim World League has earlier issued two resolutions at the 15th meeting on 31st October 1998 and 17th meeting on 13-17th December 2003 where the former approved all kinds of *tawarruq* and the latter disapproved *tawarruq munazzam*.

	▪ Inflationary expansion; ▪ Inequity in the distribution of income and wealth; ▪ Inefficient allocation of resources.

Siddiqi (2007) views the impermissibility of *tawarruq* financing facility being due to its inherent *mafsadah*. This is in accordance with the legal maxim of repelling the harmful should be prior to obtaining the useful where the harmful act must be stopped regardless of potential benefits. Although there is no explicit text, which denotes the illegality of *tawarruq* or even analogical reasoning, the element of *mafsadah* has clearly overwhelmed the *maslahah*. In addition, the *maslahah* involved in this case only refers to the interest of individuals and it is understood that public interest prevails over the individual interest and avoidance of harm takes precedence over the promotion of interest. This is clearly explained by Chapra (2008) where he articulates that the most important cause of current financial crisis is due to excessive and imprudent lending by banks which create large debt through inefficient allocation of resources.

By offering *tawarruq* which is similar to *bay' al inah* instrument particularly to structure deposits adds another debt instrument that generates debt proliferation in the market. In fact, deposit product under the concept of *tawarruq* can be considered as a replication of conventional deposit instrument. If there is no restriction and warning to the excessive utilization of debt based instrument such as further involvement of the IFIs with *tawarruq* facility, this will clearly undermine the productive economic activity discourse in Islamic moral economy (Asutay, 2007; 2008). Nevertheless, in the absence of any alternative products for necessary measures such as liquidity purpose, *tawarruq*-based financing facilities might be utilized with appropriate parameters. Therefore, in the context of the IFIs, there is a dire necessity for the decision-making institution, including the *Shari'ah* board, to go beyond the legal interpretations and literal reading of the text with a rational mind. This can be achieved by considering the overall elements of *maslahah* that would affect each stakeholder group so as to be harmonious with the *Shari'ah* objective. The *maslahah* based *ta'lil* then requires the *Shari'ah* board to consider both *illah* (cause) and *hikmah* (wisdom) aspects alongside the value dimension in promulgating *Shari'ah* pronouncements. Hence, the social dimension and economic ends of each Islamic financial products can receive their due attention.[25]

[25] The practice of Islamic finance should emphasize on the social and economic ends of financial transactions rather than the contract mechanics through which financial ends are achieved (El-Gamal, 2006: 13). This is supported by Siddiqi (2004) and Chapra (2008) where they argue that Islamic finance should depart from mere obsession with mechanistic and legal aspects of the financing products towards fulfilling the *maqasid Shari'ah*. Balz, (2010: 250) views that Islamic finance is now experiencing a "formalist deadlock" where the industry is more concerned with formal adherence to Islamic law instead of promoting Islamic ethical values. Finally, the

Concluding Remarks

The discussion so far has shown that *maslahah* can be used as an effective tool in stakeholder management, which aims at endogenising the value system beyond the mechanistic reading of the *Qur'anic* principles as currently utilized by *Shari'ah* scholars in their judgment related to IFIs. In particular, the identified dynamic approach aims to endogenise all the interests and rights of all the stakeholders in the wider sense in the process. The novelty of such a conceptualization emerges from the fact that it extends the model beyond mechanistic *fiqhi* perspective into value or religio-spiritual oriented dynamic *maqasid* understanding, whereby the model gets closer to Shatibian conceptualization of *maqasid*, which can be considered as a policy tool as well (Sidddiqi, 2006).

The utilisation of the *maslahah* principle by each organ of the stakeholders, nevertheless, needs a deep understanding of Islam as a whole particularly in terms of fulfilling the requirement of *maqasid Shari'ah* in a dynamic manner. As *maslahah* finds its wisdom and legal and value rationale in *maqasid Shari'ah*, and given that they are interrelated to each other, this paper strongly advocates the *maslahah* based approach to be a dynamic and integrated instrument for stakeholder management especially for the process of identifying the rightful stakeholders, formulating the firm's objective, determining stakeholders' obligations and rights, as well as a tool in the decision making process and consideration for *fiqhi* verdicts.

While attempting to conceptualize *maslahah* in the context of stakeholder management, there are bound to be numerous challenges and obstacles in realizing the true implementation of *maslahah*. In this regard, the main challenge refers to the lack of understanding and inherent knowledge to appreciate the uniqueness and efficiency of *maslahah* based approach. It is firmly believed that if all the stakeholders in the corporation employ *maslahah* efficiently, there will be robust and positive development on the overall performance of the firms as a whole in serving the interest of the wider stakeholders in the society. This would also mean the realization of the foundational axioms of the Islamic moral and political economy that aims at both the commercial and more importantly, social performance. This is particularly important, as constant criticism has been raised in relation to social failure of IFIs (Siddiqi, 2006; El Gamal, 2006; Asutay, 2007; 2008). It is, however, important to state that this position calls for further research to provide empirical evidence for the efficiency of *maslahah* in relation to Islamic firm's and IFIs performance and development.

Islamic Fiqh Academy of the OIC issued the final resolution on *tawarruq* at the 19th meeting in Sharjah, United Arab Emirates on 26-30th April 2009 which confirms the impermissibility of *tawarruq*.

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