



COVID-19 AND THE IMPLEMENTATION OF QAWĀ'ID FIQHIYYAH IN E-COMMERCE

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Abstract: The COVID-19 Pandemic has implications for all aspects of life, having both positive and negative impacts. The positive impact can be interpreted by finding a *maslahat* in contemporary studies by considering *mafāsīd* and *maṣāliḥ* maps. Meanwhile, the negative impact of one of them is the collapse of economic conditions. By examining the positive impact of COVID-19 and *maslahat* theory, it can be attributed to the rule of Law (*qawā'id fiqhiyyah*) resulting in changes in the frame of the rule of Law, as well as in efforts to produce a *maṣlahah*, *islāḥ*, and *istiṣlāḥ*. This study aims to examine the benefit of contemporary business development and the implications of *qawā'id fiqhiyyah* on contemporary business development during the COVID-19 Pandemic. The study uses qualitative research to look at every event and then link with the study of *fiqh* as a library research approach. Patterns and interpretation results are presented in a descriptive form to have more structured and readable. The contemporary study found six basic *fiqh* rules as a foundation in the implementation of business through e-commerce, changes in *mafāsīd* maps and in produced *maṣāliḥ* making business through e-commerce as a platform for business development to realize prosperity. The study has implications on Islamic law studies' expansion and novelty in contemporary issues and brought prosperity to the Islamic economy during the COVID-19 Pandemic.

Abstrak: Pandemi COVID-19 berimplikasi pada seluruh aspek kehidupan, yakni aspek yang mendatangkan dampak positif maupun negatif. Dampak positif dapat dimaknai dengan menemukan *maslahat* dalam kajian kontemporer dengan melakukan pertimbangan terhadap peta *mafāsīd* dan *maṣāliḥ*. Sedangkan dampak negatif salah satunya dengan runtuhnya kondisi perekonomian. Dengan mengkaji dampak positif COVID-19 dan teori *maslahat* dapat dikaitkan dengan kaidah hukum (*qawā'id fiqhiyyah*) sehingga menghasilkan perubahan dalam bingkai kaidah hukum, termasuk juga dalam upaya menghasilkan sebuah *maṣlahah*, *islāḥ* dan *istiṣlāḥ*. Kajian ini bertujuan mengkaji kemaslahatan yang terjadi dalam pengembangan bisnis kontemporer serta implikasi

qawā'id fiqhiyyah terhadap pengembangan bisnis kontemporer di masa pandemi COVID-19. Metode yang digunakan dalam penulisan ini yaitu riset kualitatif yang melihat setiap kejadian lalu mencoba menghubungkan dengan kajian fiqh sebagai pendekatan kepustakaan (*library research*), pola dan hasil interpretasi yang dilakukan selanjutnya disajikan dalam bentuk deskriptif agar lebih terstruktur dan memiliki tingkat keterbacaan. Kajian kontemporer yang dilakukan menemukan enam dasar kaidah fiqh sebagai landasan dalam pelaksanaan bisnis melalui *e-commerce*, perubahan peta *mafāsīd* dan *maṣāliḥ* yang dihasilkan menjadikan bisnis melalui *e-commerce* sebagai wadah pengembangan bisnis untuk mewujudkan kesejahteraan. Kajian yang dilakukan berimplikasi pada perluasan dan kebaruan kajian hukum Islam dalam permasalahan kontemporer dan mendatangkan kesejahteraan dalam perekonomian Islam di masa Pandemi COVID-19.

Keywords: *Business; COVID-19; Masalahah; Qawā'id fiqhiyyah.*

INTRODUCTION

Qawā'id fiqhiyyah in Islamic legal nomenclature has a function as a general reference to find a law of partial issues. However, *fiqh* experts/*fuqaha* have different opinion in interpreting *qawā'id fiqhiyyah*. Musthafa Az-Zarqa¹ interprets *qawā'id fiqhiyyah* as a general and brief legal foundation source of laws or guidelines which are filled by Sharia general law on various events including the scope of a rule.² Thus, it is a basic principle in *fiqh muamalat* as a theory to form the laws in economic. Meanwhile, according to Abbas Arfan, he explains that there are five principles in *qawā'id fiqhiyyah*.³ First, *taba'dul al-mana'fi* is a *muamalat* activity which must give benefit to the parties involved.⁴ Second, equality or fairness is a justice principle in *muamalat* for wealth is distributed equally between the rich and the poor.⁵ Third, goodwill or willingness emphasizes that Muslim's *muamalat* is based on their willingness. Fourth, there is no place for fraud or dishonesty in *muamalat* transactions. Fifth, kindness and piety are what the Muslims do. The purpose is for goodness or to obey Allah SWT. Sixth, *musharakah* defines as asking to cooperate between parties to obtain a benefit in the path to Allah SWT.⁶ The

¹ Muhammad Yusran Hadi, "Mazhab Fiqh Dalam Pandangan Syariat Islam (Mengkritisi Pendapat Mewajibkan Satu Mazhab)," *Dusturiyah* VII, no. 2 (2017): 39, <https://doi.org/10.22373/dusturiyah.v7i2.3256>.

² Abd Rahman Dahlan, *Ushul Fikih* (Jakarta: Amzah, 2005), 13.

³ Moh. Abdur Rohman Wahid, "Peran Kaidah Fiqh Terhadap Pengembangan Ekonomi Islami," *El-Jizya : Jurnal Ekonomi Islam* 4, no. 2 (2017): 220, <https://doi.org/10.24090/EJ.V4I2.2016.PP219-236>.

⁴ Iin Ratna Sumirat, "Sumbangan Islam Dalam Pembentukan Hukum Perlindungan Konsumen Nasional," *Al-Qisthas; Jurnal Hukum Dan Politik* 6, no. 1 (2015): 118, <http://jurnal.uinbanten.ac.id/index.php/alqisthas/article/view/1586>.

⁵ Iwan Permana, "Penerapan Kaidah-Kaidah Fiqh Dalam Transaksi Ekonomi Di Lembaga Keuangan Syariah," *TAHKIM: Jurnal Peradaban Dan Hukum Islam* 3, no. 1 (2020): 18, <https://doi.org/10.29313/tahkim.v3i1.5617>.

⁶ Muhammad Azizur et al., "The Role of Majallah Ahkam Al-Adliyyah In Developing Conceptual Sukuk Model Based On Maqasid Shariah: A Qualitative Study," *International Journal of Advanced Research in Economics and Finance* 1, no. 1 (2019): 34, <http://myjms.moe.gov.my/index.php/ijaref/article/view/5757>.

rule of *qawā'id fiqhiyyah* is to perform adjustment and renewal in establishing laws more dynamic according to the contemporary business which is really influenced by technology development.

Islam regulates many propositions in life, one of them is the economy which is applicable for the *Ummah*. This is mentioned in the Holy Quran surah Al-Baqara verse 282, it is the longest verse discussing about economy. However, it is not only in that verse, other verses also discuss the economy. Hence, the Quran is taken as a guide in regulating business activity discreetly, business practices to make the job enjoyable and become a motivation in life.⁷ Business practice has been developed rapidly with technology in the globalization era (from the 13th century until the 20th), this era makes business practices become more advanced by the intervention of technology in economic activity. Technology impact makes the economy unlimited because of its rapid development, and this is a challenge for the *ummah* to find a legal basis in business practices which are appropriate with current time.⁸

This study relates to the implementation of the benefit in business practices with technology development (*e-commerce*) using the basic *fiqh* rules. There are derivatives in the rules until it incurs the benefit to the current economic activity. Indeed, the challenge will face a tighter competition, the lack of creativity and knowledge make businesses cannot compete in it. One of the challenges occurred currently in the world is the massive virus plague spreading around the world, plague is called as COVID-19.

Furthermore, the study discusses *qawā'id fiqhiyyah* rules in the study of *e-commerce* using the benefit perspective to focus on two aspects. First, strengthen *qawā'id fiqhiyyah* as a contemporary law based on its '*illat* for the benefit of *ummah*.⁹ Second, the study discusses *e-commerce* during COVID-19 only focusing on the transformation behavior in *e-commerce* user, the application of Technology

⁷ Muhammad Ali Al-Sayid, *Tafsir Ayat Al-Ahkam*, Juz 2 (Bayrut: Dar al-Fikr, 1996), 86.

⁸ Walter Leimgruber, *Between Global and Local* (Aldershot (England): Ashgate Publishing Limited, 2004), 18-19.

⁹ Masyhudi Muqoribin, "Qawaid Fiqhiyyah Sebagai Landasan Perilaku Ekonomi Umat Islam: Suatu Kajian Teoritik," *Jurnal Ekonomi Dan Studi Pembangunan* 8, no. 2 (2007), <https://journal.umy.ac.id/index.php/esp/article/view/1521>; Syamsul Hilal, "Urgensi Qawa'id Al-Fiqhiyyah Dalam Pengembangan Ekonomi Islam," *Jurnal Al-Adalah* 10, no. 1 (2011), <https://doi.org/10.24042/adalah.v13i3.161>; Ahmad Muslimin, "Perkembangan Hukum Islam Versus Kehidupan Sosial Dalam Perspektif Al-Qawaid AL-Fiqhiyyah," *Jurnal Mahkamah* 1, no. 1 (2016), <https://www.journal.iaimnumetrolampung.ac.id/index.php/jm/article/view/26>; Muhamad Kumaidi, "Implementasi Kaidah La Yunkiru Tagayyur Al-Ahkam Bitagayyur Al-Azman Wa Al-Ahwal Dalam Ibadah Di Masa Pandemi," *Jurnal Asas* 12, no. 1 (2020): 65-82, <https://doi.org/10.24042/asas.v12i01.6924>; Ali Abdul Wakhid Iffatin Nur, M. Ngizzul Muttaqin, "Reformulasi Al-Qawa'id Al-Usuliyah Al-Tashri'iyah Dalam Pengembangan Fiqih Kontemporer," *Analisis: Jurnal Studi Keislaman* 17, no. 2 (2019): 69-92, <https://doi.org/10.24042/ajsk.v20i1.6573>; Arif Rahman Abdul Syatar, Muhammad Majdy Amiruddin, "Darurat Moderasi Beragama Di Tengah Pandemi Corona Virus Desease 2019 (Covid-19)," *KURIOSITAS: Media Komunikasi Sosial Dan Keagamaan* 13, no. 1 (2020), <https://doi.org/10.35905/kur.v13i1.1376>.

Acceptance Model (TAM) theory is to test the benefit and convenience in using *e-commerce*, and also formulating a legal policy as a business foundation in *e-commerce* during the COVID-19.¹⁰ From the two tendencies above, it is very important to study further on the implementation of *qawā'id fiqhiyyah* rules during COVID-19 using the benefit perspective in studying *e-commerce*. Indeed, the COVID-19 pandemic makes all activities hindered, so everyone should manage the work, worship, and transaction from home. Indeed, business transaction as an activity to fulfill human necessities becomes a challenge, weakness, or even experiencing degradation resulted in a loss.

The objective of this study is to complete the lack of comprehension in implementing *qawā'id fiqhiyyah* rules in the time of the COVID-19 pandemic by considering the benefit. The study describes specifically on (a) how the implementation of the benefit help in developing contemporary business for them who are affected by the COVID-19 pandemic related to *qawā'id fiqhiyyah* rules, (b) What the implications of *qawā'id fiqhiyyah* are on contemporary business development during the COVID-19 pandemic. The two questions above will answer the issues in economy from an Islamic perspective which has emerged recently, one of them is through *e-commerce* as a solution in overcoming the *e-crisis* and what the basic rules can become a basis to incur benefit in business development.

This study is presented using a qualitative method to observe every event which will be related to *fiqh* study as a library approach (library research), reviewing several works of literature such as books, records, and reports, which have integration.¹¹ The legal foundation used as the primary data is the collaboration of the benefit with *qawā'id fiqhiyyah* rules. Eventually, the result

¹⁰ Iwan Sidharta Dan Rahmahwati Sidh, "Pengukuran Persepsi Manfaat Dan Persepsi Kemudahan Terhadap Sikap Serta Dampaknya Atas Penggunaan Ulang Online Shopping Pada E-Commerce," *Jurnal Computech & Bisnis* 8, no. 2 (2014), <http://jurnal.stmik-mi.ac.id/index.php/jcb/article/view/118>; Edmon Makarim, "Kerangka Kebijakan Dan Reformasi Hukum Untuk Kelancaran Perdagangan Secara Elektronik (E-Commerce) Di Indonesia," *Jurnal Hukum Dan Pembangunan* 44, no. 3 (2014), <https://doi.org/10.21143/jhp.vol44.no3.25>; Nindyo Pramono, "Revolusi Dunia Bisnis Indonesia Melalui E-Commerce Dan E-Business: Bagaimana Solusi Hukumnya," *Jurnal Hukum* 16, no. 8 (2001), <https://doi.org/10.20885/iustum.vol8.iss16.art1>; Adriani Kala'lembang, "Adopsi E-Commerce Dalam Mendukung Perkembangan Usaha Mikro Kecil Dan Menengah (UMKM) Di Masa Pandemi Covid-19," *Capital: Jurnal Ekonomi Dan Manajemen* 4, no. 1 (2020): 54-65, <https://doi.org/10.25273/capital.v4i1.7358>; Muliani dan Faradina Inda Wardhani, "Pengaruh Promosi Di Instagram Dan Kualitas Pelayanan Terhadap Keputusan Pembelian Nasi Penggoda Secara Online Melalui Ojek Online (OJOL) Pada Masa Karantina COVID-19 Di Kota Pontianak," *Jurnal Ekonomi Integra* 10, no. 2 (2020): 118-35, <http://journal.stieip.ac.id/index.php/iga/article/view/141>; Priyo Suswanto dan Sri Dewi Setiawati, "Strategi Komunikasi Pemasaran Shopee Dalam Membangun Positioning Di Tengah Pandemi Covid-19 Di Indonesia," *Linimasa: Jurnal Ilmu Komunikasi* 3, no. 2 (2020): 16-29, <https://doi.org/10.23969/linimasa.v3i2.2754>.

¹¹ Kundharu Saddhono Arifa Ainun Rondiyah, Nugraheni Eko Wardani, "Pembelajaran Sastra Melalui Bahasa Dan Budaya Untuk Meningkatkan Pendidikan Karakter Kebangsaan Di Era MEA (Masyarakat Ekonomi Asean)," in *Education and Language International Conference* (Semarang: Universitas Islam Sultan Agung, 2017), 142, <http://jurnal.unissula.ac.id/index.php/ELIC/article/view/1230>.

of the study is presented descriptively or as an explanation to find out how the level of benefit accuracy occurred as the developed business with the existence of *qawā'id fiqhiyyah* rules. The research is expected to provide an expansion and novelty for Islamic law studies in contemporary issues and bring prosperity to the Islamic economy during the COVID-19 Pandemic.

THE BENEFIT OF PUBLIC

The word *المصلحة* on the scales (*wazan*) *منفعة* comes from the word *الصالح*, i.e. the existence of something in its perfect form according to its form and function.¹² Etymologically, the benefit comes from the word *الصالح* with the addition of “alif” word in the front which means “good”, the opposite of “bad”. The benefit relied on the source of *صالح* is a benefit to avoid damage. According to Rahmad Syafi'i,¹³ in the book of *lisanul Arab* explains that *al-maṣlahah* is a singular form or *mufrad* of *al-mashālih* (*صانحان*) which means the existence of using either both in its origin or through a process, for instance, generating pleasure, avail, and preventing loss. Meanwhile, according to,¹⁴ as explained by Al-Ghazali, *انشرع يمصد كهي ذافظتان* means maintaining to *sharh* purpose (in legal stipulation). According to Al-Khawarizmi,¹⁵ he explains that *كهي ذافظتان* means to keep the value of Sharia's purpose (*بذفع انفاضد كي انخهك*), that is by avoiding harm for human being's benefit and good.

Terminologically, the word *الصالح* is the cause that leads to a good sharia objective both as worship and daily behavior (custom). However, the word benefit is an antonym of loss, synonymous with the word *an-naf'u* as the antonym of the word *ad-dararu*. Based on its structure, benefit shows the totality of an effort to obtain good and prevent harm (loss).¹⁶ Later on, the terminological benefit itself means to establish the law of a circumstance to create the common good that is not governed by *nash* and *ijma* and there is no evidence to acknowledge or reject it.

According to Al-Ghazali, the benefit is an *al-maqāṣid*,¹⁷ this opinion came up after his teacher, Al-Juwaini, put the benefit as a means to preserve and protect five sharia's purposes, of course, the five purposes are as protection. The protection

¹² Asmuni, “Catatan Pengantar Diskusi Seminar Nasional & Temu Alumni Prodi DHI-FIAI-UII: New Normal Dalam Perspektif Fikih Ke-Indonesiaan” (Selasa 23 Juni Pukul 09.00-11.00 WIB, 2020).

¹³ Rahmad Syafi'i, *Ilmu Ushul Fiqh* (Bandung: Pustaka Setia, 2007), 117.

¹⁴ Amir Syarifuddin, *Ushul Fiqh*, Jilid 2 (Jakarta: Kencana, 2011), 324-325.

¹⁵ Ahmad Qorib, “Penerapan Masalah Mursalah Dalam Ekonomi Islam,” *Analitica Islamica* 5, no. 1 (2016): 55-80, <http://jurnal.uinsu.ac.id/index.php/analytica/article/view/480/381>.

¹⁶ Asmuni, “Catatan Pengantar Diskusi Seminar Nasional & Temu Alumni Prodi DHI-FIAI-UII: New Normal Dalam Perspektif Fikih Ke-Indonesiaan.”

¹⁷ Abdul Mufid, “Maqasid Al-Qur'an Perspektif Muhammad Al-Ghazali,” *Ishlah: Jurnal Ilmu Ushuluddin, Adab Dan Dakwah* 2, no. 1 (2020): 120, <https://doi.org/10.15575/al-bayan.v4i2.7289>.

creates benefit,¹⁸ thus, protection must cover some aspects, such as religion,¹⁹ soul,²⁰ offspring,²¹ mind,²² and wealth.²³ It is not just for the Muslim, but also for human being is also required to have the privilege and cooperate sincerely to protect it. In this context, the Quran explains *man qotala nafsan bighairi nafsin awu fasādin fi al-ardh fakaannama qotala al-nāsa jamī'a*, and also *man qotala mu'minan khotho'an fatahrīru roqobatin mu'minatin wa diyyatun musallamah ilā ahlihi*.²⁴

Afterward, the benefit is juxtaposed with the *maqāsid sharia* which has been identified as the priorities characteristics set by the scholars of the *ushul fiqh*, in consecutively they are: *darūrīyāt* (primary benefit),²⁵ *hājīyāt* (secondary benefit),²⁶ and *taḥsīnīyāt* (tertiary benefit).²⁷ Naturally, discussing primary, secondary, tertiary priorities is the necessities that must be fulfilled, from the upstream until the downstream. Then, it can be understood that the benefit and *maqāsid sharia* are two sides of a coin, as a wisdom manifested from Allah SWT being granted for humans to govern the worldly life until the afterlife. When an achievement is accomplished, indeed, sharia is based on *maṣāliḥ* and perfecting it as well as annulling *mafāsīd* and minimizing it. The subject, in this case, is a balance of benefit both in the term of performing and leaving the command context.

Besides that, Al-Ghazali, indeed the other *maqāsid sharia* actor, As-Syatibi,²⁸ expressed that "...The sharia evidence (stipulation) which has been enacted that sharia is brought by the command of (al-awāmīr) in which to withdraw the benefit either in the command or in the prohibition, there is no reason to be appointed except in it the benefit

¹⁸ Asmuni, "Catatan Pengantar Diskusi Seminar Nasional & Temu Alumni Prodi DHI-FIAI-UII: New Normal Dalam Perspektif Fikih Ke-Indonesiaan."

¹⁹ Agil Bahsoan, "Mashlahah Sebagai Maqashid Al Syariah," *Inovasi* 8, no. 1 (2011): 116, <http://ejournal.ung.ac.id/index.php/JIN/article/view/760>.

²⁰ Budiarti, "Analisis Yuridis Perkawinan Beda Agama Dengan Pendekatan Maqashid Al-Syariah Dalam Konteks Negara Hukum Pancasila," *Justicia Islamica* 15, no. 1 Juni (2018): 37, <https://doi.org/10.21154/justicia.v15i1.1362>.

²¹ Diniarti Novi Wulandari, "Etika Bisnis E-Commerce Berdasarkan Maqashid Syariah Pada Marketplace Bukalapak.Com," *Jmm Unram - Master of Management Journal* 6, no. 1 (2017): 8, <https://doi.org/10.29303/jmm.v6i1.21>.

²² Agus Alimuddin, "Etika Produksi Dalam Pandangan Maqasid Syariah," *Nizham Journal of Islamic Studies* 8, no. 1 (2020): 121, <https://doi.org/10.32332/nizham.v8i01.1720>.

²³ Sitti Muallimah, "Konsep Ekonomi Kerakyatan Mohammad Hatta Dalam Tinjauan," *Jurnal Investasi Islam* 3, no. 1 (2018): 71, <https://journal.iainlangsa.ac.id/index.php/jii/article/view/542>.

²⁴ Asmuni, "Teori Ganti Rugi (Dhaman) Perspektif Hukum Islam," *Millah* 6, no. 2 (2007): 98, <https://doi.org/10.20885/millah.vol6.iss2.art7>.

²⁵ Rusdiana Priatna Wijaya and Nurizal Ismail, "Sharia Credit Card in The View of Maqasid Al-Sharia," *Al-Iktisab* 4, no. 1 (2020): 8, <https://doi.org/10.21111/al-iktisab.v4i1.4347>.

²⁶ Siti Aisyah Ismail et al., "Journey to Shariah Hospital: An Indonesian Experience," *International Journal of Human and Health Sciences (IJHHS)* 2, no. 2 (2018): 56, <https://doi.org/10.31344/ijhhs.v2i2.27>.

²⁷ Ainol Yaqin, "Revitalisasi Maqashid Al-Syari'ah Dalam Istibath Hukum Islam: Kajian Atas Pemikiran Muhammad Al-Thahir Ibnu 'Asyur," *Asy-Syir'ah* 50, no. 2 (2016): 322, <https://doi.org/10.14421/asy-syir'ah.2016.502-01>.

²⁸ Suharto Muhammad Iqbal Fasa, Itsla Yunisva Aviva, Yayan Firmansyah, "Controversy On Riba Prohibition: Maqashid Shariah Perspective," *International Journal of Islamic Economics* 1, no. 2 (2019): 126, <https://doi.org/10.32332/ijie.v1i02.1804>.

for which it is commanded, and there is no forbidden cause except in it is harmful that is forbidden".²⁹

According to Al-'Izz Ibn Abdi As-Salam, he responds that "every deed which did not reach its purpose is a vanity".³⁰ Moreover, it is also mentioned that "whoever who follows *maqasid sharia* in bringing the benefit and rejecting the loss, he has attained a believe (recognition) that this loss should not have come close to it even though no particular *ijma* or *qiyas* is indicating it because the law itself obliges it".³¹

The path used to comprehend *mafāsīd* and *maṣāliḥ* is sharia or laws and the other path is mind. First is by performing legal *istinbath* (inference) and legislation directly. Second is an academic *ijtihad* to correspond the Quran guidance contained in the chapter of An-Nahl verse 43 as stated "...So ask the people of the message if you do not know".³² This makes some opinions on the benefit being compared or regarded as same as *maqāsīd sharia* to protect the purpose from harm and to accomplish it. The purpose was given to humans to regulate the worldly-life until the afterlife. Indeed, the basic law is a sharia accomplishment based on *maṣāliḥ* and perfecting it as well as annulling *mafāsīd* and minimizing it. Naturally, the balance will bring the benefit both in the context of the command that must be done and a context of the prohibition that must be avoided.

THE BENEFIT IN ESTABLISHING THE LAW

Based on *fiqh*, the benefit generates some rules that become the foundation in establishing and transforming the law itself into the dynamic reality in the life of a society. The rules are as follows:³³

First, *تحقيق المناط* (*taḥqīq al-manāt*) is to know the terrain or the legal scope, location, and its target.³⁴ This is divided into two areas, First, it is particularly for an individual; and second, it is particularly for a group or communal in nature. Both scopes are awareness of reality as a part of the requirements to instill the law. Every moment where the benefit can be created is a God's law, conversely, where there is harm that must be prevented, it means the law must be negated.

²⁹ Yaqin, "Revitalisasi Maqashid Al-Syari'ah Dalam Istinbath Hukum Islam: Kajian Atas Pemikiran Muhammad Al-Thahir Ibnu 'Asyur," 337.

³⁰ Izz AL-Din Ibn Abd Salam, *Qawa'id AL-Ahkam Fi Mashalil AL-Anam*, Juz II (Damaskus: Dar Al-Qalam, n.d.), 15.

³¹ Asmuni, "Catatan Pengantar Diskusi Seminar Nasional & Temu Alumni Prodi DHI-FIAI-UII: New Normal Dalam Perspektif Fikih Ke-Indonesiaan."

³² Departemen Agama RI, *Al-Qur'an Dan Terjemahnya* (Bandung: Penerbit Diponegoro, 2005), 217.

³³ Asmuni, "Catatan Pengantar Diskusi Seminar Nasional & Temu Alumni Prodi DHI-FIAI-UII: New Normal Dalam Perspektif Fikih Ke-Indonesiaan."

³⁴ Mukhlis Abidin, "Metodologi Pemahaman Syari'ah (Analisis Muqaddimah Kitab Al-Muwafaqat Karya Asy-Syatibi)," *YUDISIA: Jurnal Pemikiran Hukum Dan Hukum Islam* 8, no. 2 (2019): 312, <https://doi.org/10.21043/yudisia.v8i2.3241>.

Secondly, اعتبار المآلات (*i'tibār al-mā'ālāt*) is to consider the future from legal action consequences and its purposes,³⁵ whether the concentration of *al-manāṭ* is to study and observe the reality of human life (either as an individual or group). However, *alma'ālāt* is concentrated to study the future of human life, so that, legal action (read-*fiqh*) is a strategic action and planned activity in human life reality. Hence, it covers two very important time units where humans live in it, which is present time and tomorrow or future.

Third, الوعي بالمتغيرات الزمنية والمكانية (*al-ʿuwwiyyūn bi al-mutaghayyirāt al-zamāniyya wa al-makāniyya*) is (an awareness of the changes to time and place in the community's law) *fiqh* characteristic correlates with the reality which has three elements, i.e. time (*az-zamān*), place (*al-makān*), and human (*al-insān*). The three elements reflect whenever and wherever social structure elements, and human civilization activity present itself. In the context of instilling a *fiqh* study by understanding the issues of these dimensions, as an evidence, Ibn Al-Qayyim tries to formulate the rules by performing transformation (تغيير الفتوى) (تغيير الفتوى) (واختالفها بحسب تغير الأزمنة والأحوال والنيات والعقائد); entitled Fatwa Diversity to Correspond to the Time and Situation Transformation. Ar-Raisuni adds "... If occurred a time and place changes which become the foundation of establishing the old laws hence *al-faqīh* (*fiqh* experts) must re-considering the establishment of the new laws that is relevant with the current situation and condition".

Fourth, التعلق بمقاصد الشريعة (*at-ta'alluq bi maqāṣid as-syarī'ah*), it means that a *fiqh* ruling is also related to *maqāṣid syarī'ah* and the extent of its fulfillment. *Maqāṣid* will emerge *maqāṣid syarī'ah* for God's creation (human) with its various scopes, such as the life of an individual, a family, a nation, and even the entire human-being life globally (*raḥmatan li al-'ālamîn*).

Fifth, لا ضرر ولا ضرار; it may not harm or injure himself or other people, means that this principle in its cognitive nature is dedicated for an individual or a group, and strives to avoid the harm or hurt both. The principle is based on several things:

- a. لا يجوز في الشرع الضرر ابتداء (basic principle in sharia does not allow harmful actions. It means that it may not harm one's self or his wealth, because a harming action is an injustice). This unjust action is prohibited by all religions.
- b. لا يجوز مقابلة الضرر بالضرر (it is not allowed to counter harm against with harm), this is the meaning of personal borne damages "*ḍirāra lā*".
- c. يتحمل الضرر الخاص لدفع الضرر العام (Personal damages are borne to pay the general damages).
- d. الضرر الأشد يزال بالضرر الأخف (the most severe damage is borne to pay the smaller damage).

³⁵ Abu Ishaq Al-Syatibi, *Al-Muwafaqat Fi Ushul Al-Syariah*, Juz 1 (Beirut: Dar Kutub Al-Ilmiyah, n.d.), 201.

- e. الضرورات تبيح المحظورات (at any time of emergency, it allows legal violation).

Sixth, درء المفسد أولى من جلب المصالح (preventing *mafāsīd* is more important than bringing *maṣāliḥ*). Sharia's goal is to bring the benefit including to reject loss in the broader sense (worldly and afterlife) for humans, but when the benefit and the loss are opposite each other, then it is prioritized to reject the loss. In *fiqh* literature, it is known as *fiqh al- muwāzanāt*.

Certainly, in this issue of *fiqh* rules on the benefit is related to Izz Al-Dîn ibn Abdussalām's statement that the benefit and the loss have a reason that can be known with *dharurat* (fixed problem), experience, behavior, and an executed statement. The business practices conducted in the COVID-19 pandemic times will become a vague social relationship activity between bringing up the benefit or the loss. The business practices emerging vagueness surely require some postulation to find a legal establishment. A *rajih* (strong) and *marjuh* (weak) benefit and loss are required by logical reasoning with the assumption that there will not be any legal establishment, so does in forming a formulation based on the benefit. In this case, it can be understood that a ruling will not be replaced from its grounding, either the benefit or the loss, however, a dogmatic issue could not be found on the benefit and loss sides.³⁶

THE IMPLEMENTATION OF QAWĀ'ID FIQHĪYYAH IN THE TIME OF COVID-19 (A STUDY IN E-COMMERCE)

The implementation of *qawā'id fiqhīyyah* in the time of COVID-19 tries to see the benefit and the loss sides in the current business practices. Accordingly, the COVID-19 pandemic time creates social changes in *mafāsīd* and *maṣāliḥ* map. Therefore, it is required a contemporary *fiqh* study to answer the broad opportunity to activate *ijtihād al-maṣlaḥī (al-maqāṣidī)* amid changes occurred by considering the risk of the COVID-19 pandemic.³⁷

However, the COVID-19 pandemic occurred has not made *maqāṣid's* become common sense, as a legal foundation for the Muslims, work to adjust to the current situation. This has occurred because the competent party either a religious institution or Muslim scholar has not performed yet in constructing *mafāsīd* and *maṣāliḥ* map individually, both in religions and nation's development. In performing the construct, it can be applied by exploring a study on one side and examining the mechanism of the *fiqh* principle on the other side. For instance,

³⁶ Salam, *Qawa'id AL-Ahkam Fi Mashalil Al-Anam*, 13.

³⁷ Asmuni, "Catatan Pengantar Diskusi Seminar Nasional & Temu Alumni Prodi DHI-FIAI-UII: New Normal Dalam Perspektif Fikih Ke-Indonesiaan."

when someone develops a business without any encouragement from another party (law), it will not develop and will be further left behind from the advanced technology. The situation during the COVID-19 pandemic made everyone take an action. It is called a response of an *e-crisis*, with the huge demand, in order the economic crisis will not occur. Whether the transformation is not conducted, then the foundation of prosperity will collapse, the business will stop, and the economy will be left behind. therefore, a legal study will have an important role as a guide or foundation for this development.

The development can be done as a legal foundation to bring the benefit in economic to which related relevance between *al-jawābir* and *al-zawājir* theory with the previous rules as can be seen clearly in the sub-rules, i.e.:

الضرر يدفع بقدر الإمكان

“the harm must be rejected as much as possible”

The discussion of the sub-rules above comes from the primary rules that stated *“the harm must be negated”* on which primarily, it is a problem of loss. Meanwhile, its sub-rule is valid in the problem, where its *dharar* part that has not been or will occur. However, the point of the issue of sub-rules is the concept of benefit, which is an effort of prevention that is regarded good in the perspective of sharia than an effort of rejection. This effort in the economic perspective certainly mentions that there is an advantage gained rather than disadvantage. The offer and demand are always in balance.³⁸ It is obvious that substantively the sub-rules describe the loss, so that, it is required the prevention (*bi qadr al-imkan*).

Naturally, this is linked to the rules of *درء المفاسد أولى من جلب المصالح* (preventing *mafasid* is more primary than bringing *masalih*). Sharia's goal is to reject the loss in a broader meaning which is worldly and the afterlife for humans, but when the benefit and the loss are opposing each other, then it is prioritized to reject the loss.

The condition occurred at the time of the COVID-19 pandemic makes Islamic values need to be constructed by adjusting recent technology in the globalization era in dealing with the problems that come along with the COVID-19 pandemic. Accordingly, a common sense of *fiqh maqāsidī* merely legitimates the policies taken by some institutions, such as the high rates in the Termination of Employment (PHK), where some employees are laid off. It will become an answer needed to create business development precisely, so that, the *new normal* policy is as a pole in holding *ijtihad al-maṣlahī*. Surely, this will be an indication that *new normal* policy is only partial, while a *fiqh* common sense must be integrated into examining

³⁸ Abdul Haq, *Formulasi Nalar Fiqh: Telaah Kaidah Fiqh Konseptual* (Surabaya: Khalista, 2006), 220.

universalities of *al-mafāsīd (kulliyāt al-mafāsīd)* considering that pandemic occurred is the loss, which it could influence short term in some parts and long term in other parts.

As an analysis, certainly, it creates a picture that *mafāsīd* and *maṣāliḥ* will be fulfilled. This form is a contribution to direct civilization and social interactions comprehensively with the existing reality which requires us that there is a strong relationship between the benefit and *saddu al-zarī'ah*. The principle of *saddu al-zarī'ah* will be perfect for the benefit and a control of its application as well as in a form of protection to accomplish the maintenance in *maqāṣīd* five main elements (aspects of religion, soul, offspring, reason, and wealth).

Applying this, of course, a benefit is related to *maqāṣīd*.³⁹ The application is a form of short and long-term benefit which will bring business progress in the future. Naturally, business development takes the basic renewal of classical social transformation into contemporary one as a description in manifesting to respond at the time of COVID-19 pandemic occurred. The Islamic phenomenon has strong urgency because it brings a big risk for society due to social changes.⁴⁰

Surely, they are social changes if it is related to the historical event, for instance, the decision of Caliphate Umar bin Khattab regarding to the elimination of zakat distribution to a group of *qulubuhum* covert (people who are still weak in faith).⁴¹ During Rasulullah SAW period, the *qulubuhum* covert group got their share based on the *nash* or text as an attraction to follow Islam, because during the time, Islam religion was considered weak. However, as the time passed by, Islam has become stronger enough, so that *zakat* share was not given to them as in the time of the Companions. For this strategy, Umar bin Khattab tried to reprieve for theft at famine period, even though, there is the law of cutting off the hand as regulated at that time, but in this case, it was not executed. According to Umar bin Khattab, this is based on the famine since economic condition. The economic condition brought disorder in the middle of a society to survive, the people conducted the prohibition by the law to survive from hunger.⁴²

Besides that, an Islamic-based economy should be able to immediately respond to contemporary economic development extending the service by expanding business through *e-commerce* with the presence of a *start-up* that offers food, cosmetics, clothes, and also a tourism package.⁴³ Some small parts of the

³⁹ Abdul Wahab Khallaf, *Ilmu Ushul Fiqh* (Kairo: Dar al-Kuwaitiyah, 1968), 32.

⁴⁰ M. Amin Abdullah, "Relevansi Studi Agama-Agama Dalam Milenium Ketiga," *Ulumul Qur'an* 5 (1997).

⁴¹ Khallaf, *Ilmu Ushul Fiqh*, 216.

⁴² Al-Jauziyyah Ibn Al-Qayyim, *Islam Al-Muaqqaqi'in an Robb Al-Alamin* (Kairo: AIT Urus Al-Hukmiyah, n.d.), 7-9.

⁴³ Yuswo, "Pandemi COVID-19 Bawa Lima Perubahan Konsumen Digital Muslim 4.0," n.d., accessed Juli 11, 2020, <https://www.gomuslim.co.id/read/news/2020/05/05/19141/-p-pandemi-covid-19-bawa-lima-perubahan-konsumen-digital-muslim-4-0-p-.html>.

Islamic economic products has become a businesses through *e-commerce*, such as Waqara, GoHalalGo, Qazwa, Hijabenka, Ammana, and etc.⁴⁴ Development is carried out by considering the more dynamic law and the technological progress based on the benefit consideration to avoid the COVID-19 pandemic.

The book entitled the Impact of the COVID-19 Outbreak on Islamic Finance in the IOC Countries, issued by the National Committee for Sharia Finance and Economy (KNEKS), explains some aspects that might experience problems and give a solution to overcome the problems. The issues dealt is surely varied, one of them is export between countries was hampered due to the COVID-19 outbreak in the entire part of the world, hence, it causes price fluctuation unstable (up-down). The instability occurred causes the lack of investor's trust to make a business which is affected by hampering every economic aspect due to the lack of goods and services. Those problems are not occurred to the businesses that use *e-commerce* as a medium in conducting the economy by performing business from home. This is quite different from tourism and manufacture, one of economic sector, that suffer from declining up to 4.6 - 5.0%.⁴⁵ Economic activities in tourism and manufacture cannot be conducted, unless by conducting another business, such as looking for the benefit through an *e-commerce* business easily and efficiently,⁴⁶ and there is no need for the controversy between text and non-text because of different theories and phenomena. The society can interpret theory and phenomenon that have a feedback relationship both in the society and religious teaching that can incur the benefit.

In the description of every phenomenon occurred, there is a wisdom that can be learned by considering *qawā'id fiqhīyyah* namely to understand *darûrîyāt* concept, in this case, *maqāsid darûrîyāt* which is related to maintain the necessity of the soul and wealth. Islamic laws are flexible, it can be understood based on the situation and respond to the dynamics and the social transformation of the society. Since COVID-19 pandemic, it requires to perform the contemporary study by activating *ijtihād al-maṣlahî (al-maqāsidî)*, business through *e-commerce*, finds a new legal foundation and relevant on its implication. It does not merely come from *al-jawābir* and *al-zawājir* theories that stated "harm must be avoided as much as it could be" and the rule "preventing *mafāsīd* is more primary than bringing *maṣālih*". However, six rules of *fiqh* can be a legal foundation in conducting business using *e-commerce*, thus, the six *fiqh* rules emerge to find the benefit of

⁴⁴ Bintoro Agung, "Pasar Syariah Makin Diminati, Waktunya Startup Isi Peluang," n.d., accessed Juli 13, 2020, <https://dailysocial.id/post/pasar-syariah-makin-diminati-waktunya-startup-isi-peluang>.

⁴⁵ Emmy Abdul Alim Sutan Emir Hidayat, Mohammad Omar Farooq, *Impacts of the COVID-19 Outbreak on Islamic Finance in the OIN Countries* (Indonesia: Komite Nasional Ekonomi dan Keuangan Syariah, 2020), 43.

⁴⁶ Abdul Halim Barkatullah dan Tegus Prasetyo, *Bisnis E-Commerce Studi Keamanan Dan Hukum Di Indonesia* (Yogyakarta: Pustaka Pelajar, 2005), 3.

the COVID-19 pandemic outbreak. *E-commerce* business has a clear ground for encouraging contemporary studies conducted, so that, *e-commerce* business brings legal ambiguity in its implication. Recently, it finds its legal foundation from the six *fiqh* rules by comprehending *darûrîyât* concept that if the business is undertaken traditionally, it would only bring the loss.

The implementation of *qawā'id fiqhiyyah* generates a legal foundation that is established by activating *ijtihād al-maṣlahî (al-maqāṣidî)*. Thus, this has an implication for business development in the time of COVID-19 pandemic. Business through *e-commerce* is a transformation of recent economic activity. The limited space due to the COVID-19 pandemic causes economic crisis occurred around the areas spread by the plague. Business through e-commerce has become a forum to overcome the economic crisis occurred. A small part of Islamic value-based business development has been carried out, including Waqara, GoHalalGo, Qazwa, Hijabenka, Ammana, and etc. Naturally, an analysis study will create dynamics in economic development, therefore, it would not be created without a huge transition process.

CONCLUSION

The study generates an important part on *maqāṣid sharia* as the manifestation to find the benefit in implementing Islamic laws. The implementation of Islamic laws is a set of rules sourced from the Quran, Hadith, and Ijma to regulate all aspects of life including the economy, either individually or in the community. Moreover, other effort manifests the benefit in this world and afterlife. Business through e-commerce, which at first had legal uncertainties, on contemporary, studies conducted found six basic principles of *fiqh* as a legal basis in conducting business through e-commerce. Business through *e-commerce* will bring benefit, while business undertook traditionally in the time of COVID-19 pandemic, it would only bring loss.

Social transformation on *mafāsīd* and *maṣāliḥ* map in the time of COVID-19 pandemic is surely to create short and long term prosperity in the Islamic economy. This is realized on the implementation of the current *qawā'id fiqhiyyah* which affects business changes through *e-commerce* as a vessel to develop contemporary business development, while business conducted traditionally has limited space due to COVID-19 pandemic.

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