



Maqāshid Syari'ah Correlation and Good Corporate Governance in Pawnshop Syari'ah Companies

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Abstract

This study aims to describe the relationship between maqāshid syari'ah and Good Corporate Governance in syari'ah pawnshops as a performance implementation in realizing prosperity and avoiding social inequality so that it can solve the poverty problem in people's lives. This research methodology uses a qualitative approach with the type of library research, in which data collection is carried out by analyzing various existing literature and regulations and laws, which are then described. The findings and results of this study; the concept of maqāshid syari'ah must always be applied so that it is by good corporate governance in good corporate governance; pawnshop syari'ah companies must embody the concept of maqāshid syari'ah so that social inequality and poverty no longer exist in people's lives because the purpose of implementing Islamic law is to guard the soul, religion, mind, lineage and wealth. Socio-economic justice in the study of Islamic studies must always prioritize the interests and benefits of the general public.

Keyword: ekonomi, maqāshid syari'ah, sosial

Abstrak

Penelitian ini bertujuan mendeskripsikan hubungan maqāshid syari'ah dan Good Corporate Governance pada pegadaian syari'ah sebagai penerapan kinerja dalam mewujudkan kesejahteraan dan menghindari kesenjangan sosial, sehingga dapat menyelesaikan masalah kemiskinan yang ada dalam kehidupan masyarakat. Metodologi penelitian ini menggunakan pendekatan kualitatif dengan jenis library research, dalam pengumpulan data dilakukan dengan menganalisis berbagai literatur yang ada, serta peraturan dan undang-undang, selanjutnya dideskripsikan. Temuan dan hasil penelitian ini; konsep maqāshid syari'ah harus selalu diterapkan, sehingga sangat sesuai dengan good corporate governance dalam tata kelola perusahaan yang baik, perusahaan pegadaian syari'ah harus mewujudkan konsep maqāshid syari'ah, agar kesenjangan sosial dan kemiskinan tidak ada lagi dalam kehidupan masyarakat, karena tujuan dari penerapan hukum islam adalah untuk menjaga jiwa, agama, akal, keturunan dan harta. Keadilan sosial ekonomi dalam kajian studi Islam yaitu harus selalu mendahulukan kepentingan dan kemanfaatan bagi masyarakat umum.

Kata Kunci: ekonomi, maqāshid syari'ah, sosial

INTRODUCTION

Islamic economics is a social science that studies the economic problems of a society that contains Islamic values (Pratiwi, 2019). Islamic economics is part of a complete life system based on four genuine parts of knowledge: the Qur'an, Sunnah, *Ijma ulama* and *Qiyas*. Islam, as a Divine teaching that originates from revelation, contains universal values of its education for human life in political, social, cultural, economic and other activities. This means that Islam is revealed to be a way of life and life in the world and the hereafter, which is not shared by other religions. *Maqāshid syarī'ah* to realize good while avoiding evil or to benefit and reject harm. The term commensurate with the core of *maqāshid syarī'ah* is *maslahat* because the determination of law in Islam must lead to profit. The purpose of *syarī'ah* law is for the benefit of humanity (Muhammad & Oktaviyanti, 2020).

Pawnshop *syarī'ah* is a government-owned non-bank financial institution with the right to provide financing to the public based on pawning laws contained in the Al-Qur'an and Hadith and laws and regulations related to Islamic pawnshops. Pawnshop *syarī'ah* is a Limited Liability Company as stated in Article 1 paragraph (1) of the Government Regulation of the Republic of Indonesia Number 51 of 2011 concerning Changes in the Legal Form of a Public Company Pawnshop to a Limited Liability Company (Azis, 2021).

In Islamic financial institutions, both banking and non-banking. Pawning is intended not for business transactions, but the primary purpose is to help people practise banking financial institutions. The existence of Islamic Pawnshops in Indonesia cannot be separated from the desire of the public to carry out pawn contract transactions based on *syarī'ah* principles and government policies in developing economic practices and financial institutions that are by the values and principles of Islamic law (Jumansyah & Syafei, 2013).

Pawnshop *syarī'ah* were formed to answer the challenges of the community's needs, who expect lending and borrowing services that are free

from elements of fraud forbidden by Islamic law, which can be seen from the creation and implementation of pawn contracts (Irawan & Destiana, 2018). Regulations regarding pawnshop *syarī'ah* that are still under the auspices of Government Regulation Number 103 of 2000 concerning Pawnshop General Companies (Mulazid, 2012). Based on its central theme, this regulation is business-oriented, so it is not suitable to use terms in pawning where the purpose is to help others—aspects of legality under the auspices of the business nature of pawnshops in the economic mechanism. In Islam, it is prescribed to pawn not for business activities but, on the contrary, namely social activities or helping each other (Hasanah, 2017).

The application of *maqāshid syarī'ah* pawnshop regulations by social institutions needs to be organized to reduce socio-economic disparities that impact poverty. This arrangement must touch on the legal side and the ethical and monotheistic side, for example, the issue of justice and social inequality in depth. Among the forms of this arrangement is making regulations based on the principles of objectives and benefits starting from the Law or Government as a reference for technical implementation in implementing Pawnshop *syarī'ah* Institution products (Muheramtahadi, 2020).

Currently, the Islamic Pawnshop has not yet touched on the *maqāshid syarī'ah* side, namely the initial goal of establishing the pawn contract for social transactions, so that the problem of social inequality that wants to be eroded through this transaction has not been touched or even deviated. This is all homework and a necessity for the executive and legislature to realize the ideals of an ideal society and social welfare for all Indonesian people.

This research will explain the application of *maqāshid syarī'ah* to minimize social inequality and alleviate poverty. As is well known, the presence of pawnshops with the mission of solving problems without problems, seen in practice and the *syarī'ah* aspects, still requires several rules so that they can solve customer problems in *maqāshid syarī'ah*.

METHOD

His study uses a qualitative approach. Namely, the type of research is not obtained through statistical procedures or other forms of calculation; this research procedure produces descriptive data in the form of written words (Diantha, 2017). This research is a type of library research or Field Research by reading and examining related articles that can be observed. The method used in this study is the theory of social justice and social inequality in the Islamic economy, namely that assets may not circulate among only a few people (Albi & Setiawan, 2018). This also refers to the idea of *maqāshid syarī'ah*, which pivots to five benefits: protecting religion, soul, mind, self-esteem and property.

FINDINGS AND DISCUSSION

Maqāshid syarī'ah solutions to the Socio-Economic Gap

The main purpose of a transaction in the *syarī'ah* economy is the ultimate goal or orientation of a contract's *syarī'ah*, so some scholars require it in one of the pillars of a contract, namely the purpose of the agreement. In the classic books, it is stated that the purpose of the contract from pawn is to help people, not to seek profit. If that goal is misused, it will damage the pillars, resulting in social problems such as inequality and poverty (Azizah et al., 2020). Social inequality will be felt long because the social consequences are not visible to the naked eye. Therefore, the law is not enough to be seen from the point of view of momentary interests and temporal benefits, but various social and cultural aspects must be studied. This is because the law is a collection of norms for realising social order, either for short-term or long-term interests (Sukardi et al., 2019).

Expediency is part of the study of *maqāshid syarī'ah* in *ushul fiqh*, which is the basic principle of goodness and virtue. *maqāshid syarī'ah* oriented to the five distinctions; namely Preserved soul, preserved religion, preserved intellect, preserved offspring and preserved property. *Al-Maslahah* must be based on the

benefit of the people. However, individual benefits cannot be ignored, so any policy or behaviour that does not lead to the benefits and interests of the people is not a problem. However, *maslahah* basically must first refer to individual honours. So, if economic activity clashes between personal benefits and the benefits/interests of the community, the interests of the general public will take precedence (Djamil, 2017).

Maqāshid syarī'ah is the goal of enforcing laws that have the principle of good use, demand public opinion and other benefits. A *mujtahid* who is only oriented to practical and formal legal matters without looking at the public benefit and the impact arising from the results of his *ijtihad* has not been said to be the result of his *ijtihad*, according to *syarī'ah*. The opinion of a *mujtahid* can be said to be by *syarī'ah* if his opinion brings justice and benefits to society as a whole. For example, according to ar-Ramli, *ijtihad* in economics concerns products with no usury principles. It is not certain that the results of *ijtihad* that are free from *maghrib* will lead to justice and benefit society in general. It does not mean that the results of *ijtihad* are by *syarī'ah*. According to al-Mahalli, *maqāshid syarī'ah* is made for the general public's benefit. Then these benefits must exist in this world and the hereafter. The main goal of *maqāshid syarī'ah* in the social economy is to achieve prosperity and happiness (Agung Kurniawan, 2021).

If a *mujtahid* wishes to issue an opinion on matters of *syarī'ah* law, what must be considered is the consequences that that law may cause. According to al-Ghazali, *mujtahid* may only give a direction on *syarī'ah* issues after considering the possible implications of the issued law, whether there are benefits or harm that occur after the rule is issued (Al-Ghazali, 1907). Thus, in contemporary *ijtihad*, a collective agreement is needed to determine the consequences of the law in various aspects. If the legal matters bring harm, then it is by *syarī'ah*. However, if the legal consequences that arise damage society in general, then it is not by *syarī'ah* (Hadi, 2018).

Scholars who have been scientifically tested must master current problems and must have multi-disciplinary capacities. Therefore, in *ushul fiqh*, the requirement for a mujtahid is to understand the concept of one of the sub-sciences of *ushul fiqh* because it is a science that studies cultural, social, and legal consequences resulting from their opinions (Azwar, 2016). The community's needs here are, of course, a capable society, not a classless society. Thus, if the benefit of some people/groups collides with the use of the people, then the benefit of the people must take precedence, and the help of a group of people must be ignored.

Maqāshid syarī'ah which aims to benefit the world and the hereafter, as al-Bajuri said, will not be achieved simultaneously because what is achieved is only help in this world, while the benefit is in the future or reward from God. If not performed, then achieving prosperity as the economy's main objective is not realized. As a result of not learning capital, a decent and good life is also not performed because it is only concerned with the worldly aspect (Hidayatullah, 2018).

In other words, according to al-Zuhaili, *maqāshid syarī'ah*, that is, establishing *syarī'ah* pawn transactions, is for social commerce, namely helping each other (Az-Zuhaili, 2006). One of the goals of mutual help by providing loans plus collateral is a form of empathy and sympathy from those who have money to those who do not have money, from those who are economically sufficient to those in need.

This form of assistance is in the context of providing opportunities for the weak to eliminate their suffering and weaknesses so that, in this way, the socio-economic gap between those who are rich and those who are poor can be eroded. Socio-economic disparities are only motivated by material things, namely poverty. However, in Islamic economics, social inequality is both temporal and non-material, namely social alienation between people, especially between those who

are sufficient economically and financially and those who need it (Syahrudin, 2020).

Social consequences of pawnshop syarī'ah regulations

Because laws and government regulations are not yet by *syarī'ah*, for example, the rule of Government Regulation Number 103 of 2000 concerning Pawnshop Public Companies has several social impacts. First, there is no enthusiasm to help the lower middle class because this regulation is business oriented. Business activity is if it benefits both parties materially, while the mortgage currently applied for only benefits one party who receives the mortgage (Scholastika et al., 2021). In Islam, pawning is for the person receiving the pawn to help people, not to seek profit from helping others. So, it can be assumed that with this pawn transaction, the recipient of the debt can temporarily meet his urgent needs. Later, after he fulfils temporary needs and can repay his debt, he can restart his business. Second, there is no spirit of erasing the gap between the poor and the rich, even though one of the main objectives in non-business transaction contracts is to eliminate the gap between the poor and the rich so that a feeling of affection and a sense of mutual upliftment and care arises. Thus, there will be a spirit of cooperation between individuals, resulting in economic and social strength (Miller et al., 2018).

Third, the side of harm that is caused to parties other than people who are not in a contract; if the use of non-profit contracts becomes a business contract, for example, pawn for business activities, the impact of harm will not only befall himself or the parties in the agreement, but It will also affect those around them who do not make contracts, especially people who have no capital and are poor because they do not have the opportunity to do so so that wealth and prosperity will always roll on the side of those who have entered into contracts. These are people elitist people whose wealth only revolves around them (Susan, Payne Carter and Paige, 2013). This is also what the Prophet worried about. Through His

words, "*la dharara wala dhirara*" (Al-Bukhari, 2002), do not let actions or contracts result in loss or misery to themselves and others.

The use of non-commercial contracts in place, such as pawn, is not for commercial purposes but stipulates, as usual, according to the purpose of the agreement, the impact of benefit will be realized both for those who carry out the contract or related parties as well as those who do not contract. Eliminating harm to himself and others and bringing benefit to himself and others is a gift from God and must be implemented.

Fourth, from a legal point of view, the violation arose because the pawn transaction was not for business but for mutual assistance; if for business, there were other transactions. This method wants to be taken by the pawnshop, not wanting to take the risk of loss, which is contrary to the essence of religion. Because if the business experiences a profit, it is the pawnshop that loses because the gains are disproportionate, while if the company suffers a loss, the institution still benefits. If this pattern is not changed, it is the same as the interest system in conventional institutions that arises from unfair portions, both on the part of the customer and the institution. The business principle is to always go hand in hand between profits and losses. Of course, the loss is not due to intentional mistakes (Azhari, 2019).

Fifth, from an ethical standpoint, the implementation of pawns at pawnshops is not by the principles of Islamic economics, namely the principle of social justice. God's Word explains that wealth and wealth must be distributed fairly and evenly and must not stop or revolve among a few people. According to the Qur'an, in the property owned by a person, there are rights of people who do not. Assets may not be owned, controlled and utilized by themselves or a few people but must have a social function value distributed through commercial channels or non-profit transactions (Widiastuti & Fatimah MZ, 2021).

According to al-Qutb, social welfare is not just financial as it is known as social welfare and social security, social assistance in the form of material is only

one of the smallest parts of the state of aid recommended in Islam (Al-Banna & Mohd Daud, 2018). Social justice will give birth to social welfare. Social welfare will not be born if social justice does not exist; for example, people are allowed to excel in a competition, and if those who win the competition are given the same prize, it is certainly not fair. Justice is if all individuals are assigned the same opportunity to participate in contests and excel so that social welfare is more inclined towards equality of opportunity.

Correlation of Islamic studies and good corporate governance

Islamic Studies has a more complete and comprehensive concept oriented to the interests and benefits in general and aims only at God. The religion of Islam has always kept people from falling into illegal and dishonest practices in accepting trust. In modern terminology, good corporate governance is called Good Corporate Governance because God likes it when someone does a job well. Good Corporate Governance in Islamic Studies must refer to the following principles: First, monotheism is the main foundation of all Islamic teachings (Jummaini, 2019). Monotheism is the basis for all concepts and all activities of the Muslim Ummah, both in the economic, political, social and cultural fields.

وَلَمَّا سَأَلْتَهُمْ مَنْ خَلَقَ السَّمَاوَاتِ وَالْأَرْضَ لَيَقُولُنَّ اللَّهُ ۗ قُلْ أَفَرَأَيْتُمْ مَا تَدْعُونَ مِنْ دُونِ اللَّهِ إِنْ أَرَادَنِيَ اللَّهُ بِضُرٍّ هَلْ هُنَّ كَاشِفَاتُ ضُرِّهِ أَوْ أَرَادَنِي بِرَحْمَةٍ هَلْ هُنَّ مُمْسِكَاتُ رَحْمَتِهِ ۗ قُلْ حَسْبِيَ اللَّهُ عَلَيْهِ يَتَوَكَّلُ الْمُتَوَكِّلُونَ

If indeed thou ask them who it is that created the heavens and the earth, they would be sure to say, "(Allah)". Say: "See ye then? the things that ye invoke besides Allah, - can they, if Allah wills some Penalty for me, remove His Penalty? - Or if He wills some Grace for me, can they keep back his Grace?" Say: "Sufficient is Allah for me! In Him trust those who put their trust. (QS al-Zumar: 38).

The essence of monotheism also means unanimous surrender to the will of God. Both regarding worship and Muamalah. So that all activities carried out are to create a pattern of life according to God's will. When doing business, he must first know well the religious laws governing trade so that he does not

engage in activities that are unlawful and detrimental to society. In trading, what must be considered is how to create a friendly atmosphere and conditions guided by religious values.

Second, *Taqwa*, the principle or principle of *Taqwa*, is the main principle for establishing an Islamic institution in any form, the focus of *Taqwa* to Allah and His pleasure. Business governance in Islam must also be upheld on the foundation of piety to Allah and His delight in.

أَفَمَنْ أَسَّسَ بُنْيَانَهُ عَلَىٰ تَقْوَىٰ مِنَ اللَّهِ وَرِضْوَانٍ خَيْرٌ أَمْ مَنْ أَسَّسَ بُنْيَانَهُ عَلَىٰ شِقَا جُرْفٍ هَارٍ فَانْهَارَ بِهِ فِي نَارٍ جَهَنَّمَ ۗ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ

Which then is best? - he that layeth his foundation on piety to Allah and His good pleasure? - or he that layeth his foundation on an undermined sand-cliff ready to crumble to pieces? and it doth crumble to pieces with him, into the fire of Hell. And Allah guideth not people that do wrong (QS al-Taubah: 109).

In doing business, it should be consensual or voluntary. It is not justified that an act of job, for example, trading, is carried out by coercion or fraud. If this happens, you can cancel the action. The principle of right shows the sincerity and good faith of the parties.

Third, balance is two concepts of equilibrium in Islam. *Tawazun* is more widely used in explaining physical phenomena, even though it has social implications, which then often become areas of justice as a manifestation of *Tawhid*, especially in the social context, including economic and business justice. Allah SWT says in.

وَالسَّمَاءَ رَفَعَهَا وَوَضَعَ الْمِيزَانَ ۗ أَلَّا تَطْغَوْا فِي الْمِيزَانِ وَأَقِيمُوا الْوَزْنَ بِالْقِسْطِ وَلَا تُخْسِرُوا الْمِيزَانَ

And the Firmament has He raised high, and He has set up the Balance (of Justice), In order that ye may not transgress (due) balance. So, establish weight with justice and fall not short in the balance (QS. al-Rahman: 7-9).

In the context of social justice, the parties to the engagement must act correctly in disclosing their will and circumstances, fulfilling the agreements they have made, and fulfilling all their obligations.

Fourth, Benefit. In general, the benefit is defined as goodness and welfare. The experts of ushul fiqh express it as everything that contains benefits and goodness and avoids harm, damage and ugliness. Imam al Ghazali concluded that Benefit is an effort to realize and maintain the five basic needs: maintenance of religion, maintenance of the soul, care of the mind and maintenance of offspring.

Islamic studies on maqāshid syarī'ah

Maqāshid is the plural form of the word *qasada*, which in this case means will or purpose. *Maqāshid* is divided into two types, namely *maqāshid ashliyyah* and *maqāshid tabi'ah*. It was named like this; a naming done by al-Ghazali. For *maqāshid ashliyyah*, there is no room for human involvement in it because it is natural for all religions, whenever and wherever. *Maqāshid ashliyyah* is divided into *dharurah 'ainiyah* and *dharurah kifaiyah* (Al-Syatibi, 1998).

As for *dharurah 'ainiyah*, it is the duty of every mulatto. Meanwhile, *dharuriah kifaiyah* is a collective obligation. *Maqāshid tabi'ah* in which there is a portion of the involvement of the mulatto. So from this aspect, it can realize desires that are human needs, and by fulfilling all human needs, world affairs and religion can be upheld. This is all because of the gift of the all-wise God. He created for humans the desire to eat, drink, have sex, heat, and cold so that humans need to try to get food, drink, clothing, women and proper housing to sustain their lives for the life of this world and the hereafter. Allah also created heaven and hell, sent by His Messenger, to convey that the eternal place is not this world, but an afterlife must be accounted for, which can make a person happy or wretched forever. Based on that, *maqāshid tabi'ah* is a complement to *maqāshid ashliyah* (Al-Ghazali, 1907).

Etymologically, *maqāshid syarī'ah* consists of two words, namely *maqāshid* and *syarī'ah*. *Maqāshid* is the plural form of *maqshud* which means intentional or purposeful. As for *syarī'ah*, it means the way to water, or it can be said with the

course, towards the source of life, while in terms of *maqāshid syarī'ah* is the gaze of Allah to make maslahah for humans. *Maqāshid syarī'ah* is to realize goodness while avoiding evil or to gain benefits and reject harm. The term commensurate with the core of *Maqāshid syarī'ah* is maslahat because the determination of law in Islam must lead to benefit (Az-Zuhaili, 2006).

According al- Syatibi, the benefit that will be realized by Islamic law from the five cases above has three needs: *daruriyat*, *hajiyat*, and *tashiniyat* conditions (Al-Syatibi, 1998). Islamic law aims to maintain and preserve human integrity at all levels, both in the *daruriyat*, *hajiyat* and *tashiniyat* groups. According to Khallaf, if the ranking of needs above each *daruriyat*, *hajiyat* and *tashiniyat* has been perfectly fulfilled, it means that human benefit has been realized, which is the goal of *syarī'ah* law (Hasram, 2019). Furthermore, *daruriyah* is divided into five points known as *al-kulliyat al-khamsah*: guarding religion, the soul, protecting the mind, the offspring, and the property. Protection of religion is the first goal of Islamic law because religion is a way of life for humans. Protection of religion is carried out by maintaining and carrying out religious obligations and carrying out religious provisions and carrying out religious provisions to carry out duties to Allah. Maintenance of the soul is the second goal of Islamic law because Islamic law is obligated to maintain the human right to live and defend his life. Islam regulates and upholds Human Rights, especially the right to life.

Every time a human operates his mind and his mind uses his heart's eyes and attention; then he will feel safe, peaceful and calm. Intellect is a bond because it can bind and prevent its owner from doing bad things and evil. This is where Islam instructs us to guard our minds, preventing all forms of persecution aimed at it, or it can cause damage and diminishment of that mind. Protection of offspring can be done by avoiding things that can endanger continuity and violate religion and protecting against all threats to the existence of offspring. Islam guarantees human dignity by paying great attention, which can be used to give specialization to human rights (Sari et al., 2021). Humans are motivated to seek wealth to maintain their existence and to increase material and religious

enjoyment. However, all of these motivations are limited by three conditions, namely that assets collected lawfully are used for lawful things and from these assets must be excluded the rights of Allah and the community in which he lives. If the five items above can be realized, a noble and prosperous life can be achieved in this world and the hereafter. If one of the five things is not fulfilled correctly, life cannot run perfectly, hurting one's survival (Nuroh Yuniwati et al., 2021).

CONCLUSION

Pawnshop *syarī'ah* in implementing pawnshops on the basic principle is to help each other in people's lives, not just for business purposes. The existence of Pawnshop *syarī'ah* in Indonesia cannot be separated from the desire of the public to carry out pawn contract transactions based on *syarī'ah* principles and government policies in developing economic practices and financial institutions that are by the values and principles of Islamic law.

The application of *maqāshid syarī'ah* in Pawnshop *syarī'ah* regulations that social institutions apply needs to be organized to reduce socio-economic disparities that impact poverty. Not only touching the legal side, but this arrangement must also touch all aspects of *mashlahah*. Pawnshop *syarī'ah* have fulfilled the *maqāshid syarī'ah* side so that it has an impact on solving social inequalities and bringing prosperity to people's lives.

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