



Suruhanjaya Sekuriti
Securities Commission
Malaysia

IMPLIKASI DHARURAH DAN HAJAH DALAM OPERASI KEWANGAN ISLAM

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KONSEP HAJAH DAN DHARURAH – PANDUAN BERZAMAN

Konsep Hajah dan Dharurah telah diaplikasikan di dalam mengeluarkan keputusan-keputusan MPS SC seperti mengambilkira *`umum al-balwa* dalam membuat justifikasi terhadap sesebuah syarikat bercampur, yang aktiviti utamanya adalah halal.

Dalam konteks pasaran modal Islam, *`urf tijari* iaitu perkara yang menjadi amalan kebiasaan dalam perniagaan akan diambil kira sebagai asas sesuatu panduan dan hukum.

Sumber: Keputusan Majlis Penasihat Syariah Suruhanjaya Sekuriti Malaysia, Edisi Kedua

Objektif Utama:

**Memberi Manfaat dan
Mencegah Kemudaratan
(*Jalb al-Masalih wa Dar' al-Mafasid*)**

PENDEKATAN BERASASKAN PRINSIP (*PRINCIPLES BASED APPROACH*)



TIMBALAN Menteri Kewangan 1, Datuk Seri Ahmad Maslan, Awang Adek Hussin (kanan) dan Pengarah Negara Bank Dunia bagi Brunei, Malaysia, Filipina dan Thailand, Asia Timur dan Pasifik, Dr. Ndiame Diop (kiri) melihat buku Panduan Maqasid Al-Shariah bagi Pasaran Modal Islam Malaysia selepas majlis pelancaran pada Persidangan Suruhanjaya Sekuriti Malaysia (SC) - Bank Dunia di Kuala Lumpur.

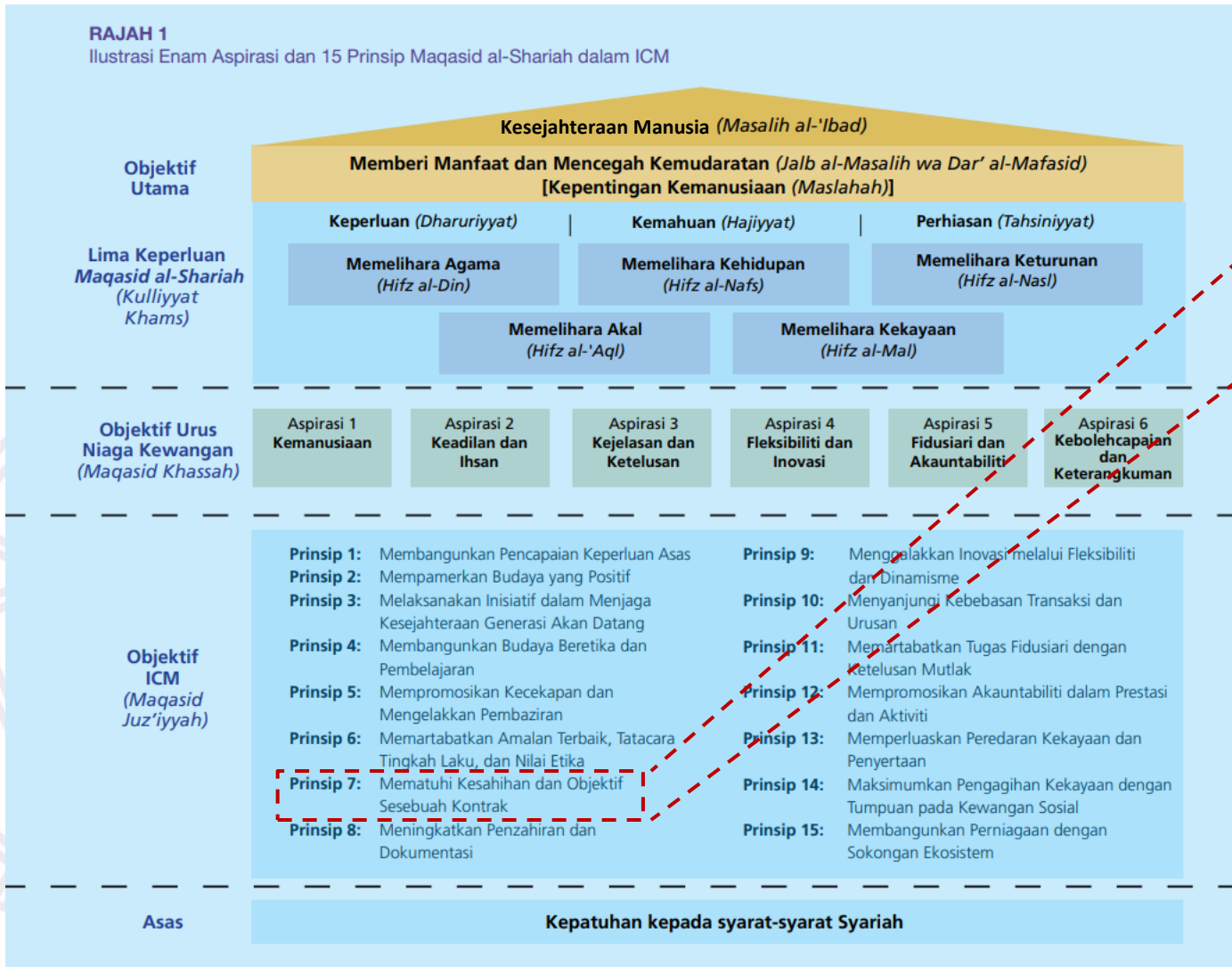
Menyedari objektif utama Syariah adalah untuk memberi manfaat dan mencegah kemudaratan (*Jalb al-Masalih wa Dar' al-Mafasid*), ICM SC memilih pendekatan berasaskan prinsip berbanding berasaskan peraturan.

Ini diterjemahkan dengan penerbitan *Maqasid Al-Shariah Guidance Islamic Capital Market Malaysia* (Panduan) pada November 2023. Panduan ini merupakan usaha utama saing untuk mempertingkatkan ekosistem ICM secara menyeluruh, selaras dengan prinsip kewangan Islam yang sebenar.



- 1 **Kemanusiaan**
- 2 **Keadilan dan Kebajikan**
- 3 **Kejelasan dan Ketelusan**
- 4 **Fleksibiliti dan Inovasi**
- 5 **Fidusiari dan Akauntabiliti**
- 6 **Kebolehcapaian dan Keterangkuman**

MENDALAMKAN INTIPATI DARIPADA RUPABENTUK (*SUBSTANCE OVER FORM*)



Prinsip 7: Mematuhi Kesahihan dan Objektif Sesebuah Kontrak

Prinsip ini memastikan bahawa perjanjian kontrak adalah selaras dengan keperluan Syariah, jelas, dan memenuhi tujuan yang dimaksudkan oleh pihak-pihak yang berkontrak. Ini untuk memastikan bahawa intipati kontrak lebih diutamakan berbanding rupabentuk.

SEBAHAGIAN PENZAHIRAN (*DISCLOSURE*) DI DALAM CADANGAN-CADANGAN INDUSTRI (*INDUSTRY PROPOSALS*)

1. SUKUK

(i) Principle 7: Adhering to the Validity and Objective of Contracts

- Adhering to the validity and objective of contracts entails ensuring that contractual agreements are in accordance with Shariah requirements, clear, and serve their intended purpose to ensure the contract's substance is emphasised. Following that, it is imperative for a transaction concluded between the contracting parties to be in line with the intention of the needs and goals of such parties.
- It heavily lay emphasis on substance of contracts and hold it supreme. Emphasizing the role of intention, Imām Ibn al-Qayyim (1349), an eminent Hanbli jurist, writes:

“The evidences and rules of the Shari’ah reveal that intentions are taken into consideration in the contract. These intentions affect validity and invalidity, and lawfulness and unlawfulness, of a contract, but more seriously, that they affect the action, which is not a contract, with respect to making it lawful, or unlawful. The same item becomes lawful, sometimes, and unlawful, at other times, depending on the variation of intentions and intended objectives.”
- Another renowned scholar of Islamic law, Imām Shatibi, (d. 790/1388), emphasizes the role and significance of objectives and intentions in determining the validity and invalidity of dispositions. He says:

“Deeds are to be judged by intentions, and objectives are taken into account in dispositions, such as rituals and dealings. Roots of that are innumerable. Objective and motivating cause differentiate a ritual from transactions and dealings - that is, contracts and dispositions. They also determine the validity, or invalidity, of these acts. Thus, when an ultimate objective of an act is unlawful, the act is also unlawful. For instance, when a sale is intended to be a means for ribā, such sale is invalid.” (Shatibi, 1994)
- The Wakalah structure is well-suited to reflect the issuance of this sukuk, as it operates on the foundation of an agency contract, where the investor mandates the issuer to invest the sukuk proceeds on their behalf. In this setup, the issuer is entrusted to manage these funds diligently and in compliance with Shariah principles, with the aim of generating returns for the investor. Since the proceeds of this sukuk are largely allocated for general business purposes that adhere to Shariah compliance, alternative contracts like Mudharabah or Ijarah are less suitable. These contracts have distinct features and are better aligned with specific investments or asset-based needs rather than the broader flexibility required for general business purposes. Therefore, the Wakalah structure not only aligns with Shariah requirements but also meets the unique demands of this issuance effectively.

SEBAHAGIAN PENZAHIRAN (*DISCLOSURE*) DI DALAM CADANGAN-CADANGAN INDUSTRI (*INDUSTRY PROPOSALS*)

2. DANA DAGANGAN BURSA SECARA ISLAM (*ISLAMIC EXCHANGE TRADED FUND*)

(i) Principle 7: Adhering to the Validity and Objective of Contracts

- The contractual agreements of the ETF Fund adhere to Shariah requirements, ensuring clarity and alignment with the objectives of the involved parties. All essential information is diligently outlined in the ETF Fund documents, including the Prospectus, marketing materials, product disclosure sheets and any other relevant documentation associated with the ETF Fund.

TERIMA KASIH

