

Al-Ma'ālāt approach in Islamic Finance: Literature Review as First Step

By

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Abstract

The jurisprudence of al-Ma'ālāt is an ancient jurisprudence rooted in Islamic law, and it is concerned with analyzing and taking into consideration the consequences and results people's actions can generate. The Fiqh was used by the Prophet and Sahaba, and it, thereafter, became so famous during the period of Imam Abu Hanifah, the founder of the Hanafi School of Jurisprudence. Fiqh of al-Ma'alat is a great distinctive feature and one of the important jurisprudential aspects of the Hanafi School. The school makes copious use and reference to the theory and practices of al-Ma'ālāt. Where the Hanafi school uses the term "Ariat i.e., have you pondered if that happened" and then builds the fatwa ruling based on this future event and also on the expected results of this event. History also mentions Al-Shatibi's attempts to draw the attention of the imams of his time to the importance of this jurisprudence through his book

Al-Muwafaqāt. But despite all the attempts, the writings on it are still few compared to Maqasid Al shariah, and the writings in it in Islamic economics and finance in the English language are almost non-existent, as there is only one source in English according to the researcher's knowledge. Unusually however, this important discipline was not given adequate attention especially by later scholars. Despite its significance. The reasons behind that, as the researcher think due to it is not easy to discover and need deep knowledge and interdisciplinary approach which not easy for each imam to discover or can do it. This article is an attempt to restore interest in it by looking at it through several Islamic, economic and administrative aspects, but to start with this jurisprudence to "gain an understanding of the existing research and debates relevant to a particular topic or area of study, and to present that knowledge in the form of a written report. You will also gain insight into how researchers apply the concepts you are learning in your unit to real world problems.

Key words: Al-Ma'ālāt, Fiqh al-M'ālāt, Fiqh al-Maqāsid, Islamic Finance.

منهج المآلات في التمويل الإسلامي: مراجعة أدبية

بهناز القره داغي

طالبة دكتوراة في الجامعة الإسلامية العالمية بماليزيا، وباحثة في كلية الدراسات
الإسلامية بجامعة حمد بن خليفة - قطر

أزنان حسن

أستاذ في الجامعة الإسلامية العالمية - ماليزيا

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المُلخَص

فقه المآلات هو فقه قديم متأصل في شريعتنا الغراء، وهو فقه تتميز به شريعتنا الإسلامية قبل قرون من اكتشاف أهمية الانتباه إلى النتائج المستقبلية لأي مشروع اقتصادي أو ما يعرف بالإدارة بالنتائج وعلم المستقبلات الذي اشتهر في أوائل القرن العشرين. وقد استخدم الرسول صلى الله عليه وسلم والصحابة رضي الله تعالى عنهم هذا الفقه، وأكثر من اشتهر من الأئمة باستعماله هو الإمام أبو حنيفة مؤسس المذهب الحنفي، حيث تستخدم المدرسة الحنفية مصطلح «أرايت لو كان كذا» ثم بناء الحكم الشرعي على الواقعة المستقبلية وعلى النتائج المتوقعة لهذه

الواقعة. كما أن التاريخ يذكر محاولات الشاطبي لفت اهتمام أئمة عصره الى أهمية هذا الفقه من خلال كتابه الموافقات. ولكن رغم كل المحاولات لا تزال الكتابات فيه قليلة مقارنة بفقه المقاصد، والكتابات المتعلقة به في علم الاقتصاد الإسلامي وباللغة الإنجليزية تكاد تكون معدومة، حيث لا يوجد إلا مصدر واحد باللغة الإنجليزية على حسب معرفة الباحث. والسبب وراء ذلك - كما يعتقد الباحث - أنه علم ليس بالسهل اكتشافه كما أنه يتطلب علماً ومعرفة دقيقة جداً وبصيرة وتعدداً في الاختصاصات، وهو أمر لا يقدر عليه كل إنسان. هذه المقالة محاولة لاستعادة الاهتمام بهذا الفقه من خلال النظر إليه من عدة جوانب قانونية واقتصادية وإدارية، والخطوة الأولى لتحقيق ذلك هو الرجوع إلى الدراسات السابقة التي تعطينا الإطار الفكري والعلمي اللازم لتأصيل هذا العلم والحصول على مزيد من الفهم للمصطلحات والمحتوى والجهود السابقة وإلى أين وصلت ثم التكملة بعد ذلك من حيث توقفت.

الكلمات الافتتاحية: المآلات، فقه المآلات، فقه المقاصد، التمويل الإسلامي .

Introduction

Islam is loaded with adequate, highly effective, and operationally workable theoretical provisions with which to tackle any emerging situations across every time and space. The history of Islam across centuries of Islamic civilizational advancement is full of concrete examples on these contentions. Many efforts have been made in the contemporary global sphere to chart out mechanisms and ways through which multidimensional human problems can be solved. In this regard, a lot of efforts have emerged by individual or organizations all with a view to contributing their share in addressing such human messes especially in economic and finance side. This gap, as the researcher believe, can be aptly bridged by the al- Ma'ālāt approach as from figh perspectives or other aspects. In this article the researcher will focus on the jurisprudence of al-Ma'ālāt to prove it is an ancient jurisprudence rooted in Islamic law, and it is concerned with analyzing and taking into cognizance the consequences and results of actions. This first step is crucial to emerge the other aspects for al-Ma'ālāt. It is imperative to note that the jurisprudence of al-Ma'ālāt has a strong nexus with Maqasid al Shari'ah and some important Islamic rules and maxims. It is of many types and ranks and there are terms and conditions of inhibitions as well as methods of detecting al-Ma'ālāt and the means to solve the opposing al-Ma'ālāt mechanism.

Research Problem:

There is a need to improve the practice of Islamic finance everywhere and the attempted to do that by make the shareholders to consider their result of presents acts in the future, the consequence of their acts, this will create the awareness to correct a lot of issues which is now in the IF practice.

To consider the consequence of the acts we need to see it first if is it legal from Shariah view or not? And to see the available literature review in the field to have better understanding about it. To do that we need to dig on all available and manageable literature we have.

Research Question:

1. What is the definition for al-Ma'ālāt as a concept in theoretical and practical level?
2. How many literatures are reachable? What is most common subject and topic in those literature? Where have they stopped? What are the literature review analysis shows?

Section one: The Concept

The Definition of Fiqh al-Ma'ālāt

The term al-Ma'ālāt both theoretically and practically has been in existence since the time of Prophet Mohammad (PBUH). It is a theory strictly developed and elaborated by our scholar, particularly during the golden age of the Islamic civilization as Imam Abu Hanifah time and Alshatibi era.

Ibrahim Ibn Musa Ibn Mohammad al-Shaṭībī (Abu Ishaq al-Shaṭībī) who mapped out the subject on the issue in his inspirational book called al-Muwāfaqat. It should be well noted that al-Muwafaqāt fi Uṣūl al-Sharī'ah is also one of Imām Shaṭībī's best-known books. Al-Shaṭībī mapped out the conceptual paradigm, the theoretical framework of the concept of al-Ma'ālāt. Moreover, he drew the attention of the Muslim Jurist council of his time to the importance of al-Ma'ālāt at the practical level in Islamic commercial transaction.

Meanwhile, the contemporary Muslim scholars would seem to have failed to grasp the centrality and supreme importance of al-Ma'ālāt in Islamic finance sectors. In this regard, Ali Muheiden al-Quradaghi made several attempts to tackle the subject of al-ma'ālāt intellectually as we will see in the table later.

The concept or term al-Ma'ālāt is an exceptionnel jurist prudential word, which technically contains various concessional and conceptual definitions, such as al-'āqibah (the consequence, the results, the outcomes, etc.). The point of reference here is the al-'āqibah, the concept which the Glorious Qur'ān emphasizes and repeatedly mentions more than 33 times in various chapters of the Holy Book referring to the material means utilized by human beings. In other words, the Qur'ān does not directly mention the consequence of money, weapons, ships, plants, and animals etc. Metaphorically, as their consequences solely depend on the legal person who may use them for good or evil purposes. Therefore, money is a double-edged sword, a source of evil or goodness depending on how the person possesses it and how he may wish to utilize it. While at times gathering money involves a lot of dangers, it at the same time, bears within it a lot of prospects of success. Money can be used to finance and sponsor objectives-laden projects, and sometimes once it is lacked, things could get out of hands.⁽¹⁾

(1) For an interesting account of how money is regarded as both a mercy and a curse, read the poetic verses of Maqamat Three in Maqamat al-Hariri titled al-Dinariyyah where money is extensively praised and hailed and at the same cursed and blamed. <https://al-maktaba.org/book/26585/26>

The Arabic term ‘ma’ālāt’ is the plural of ‘ma’āl’ , which can have numerous literal meanings.

As for the technical meaning, the researchers did not find in the books of definitions anyone who mentioned the meaning of ma’āl technically. However, from the literal meaning of ma’āl, it can be technically defined as “the consequence resulting from something”⁽²⁾.

In this essay, the fundamental purpose of message is aimed at extracting al-Ma’ālāt approach in the field of Islamic economics by exploring the depths of past and recent studies in this field.

Section 2: Literature Review of Fiqh al-Ma’ālāt in the modern time

The oldest study in previous modern studies dates to 1976 and the gap between Al-Shaṭībī’s Book published in the fourteenth century AD and the contemporary studies in the twentieth century is not considered a real gap, the researcher believes that there must be some active researchers who effectively addressed the issues of al-Ma’ālāt in their respective books or research papers. However, the researcher did not find the earliest of study of 1976, and perhaps the reason - as the researcher think is due to this gap period equally witnessed socio-economic and political disorder coupled with the colonization of the Islamic world, this led to the loss of many valuable pieces of literature that was once available on the field. Another reason for the lack of scientific output is the researchers’ interest in Blocking Excuses rather than the jurisprudence of al-Ma’ālāt, so there are much writing materials in this area.

The researcher further found that the total recent books that dealt with the jurisprudence of al-Ma’ālāt are 17- as far as the researcher could reach, that are covered between 1976 and 2021, which cover the period of 45 years. The researcher believes that there are a lot of hidden papers and studies which are not known yet.

Table 1 is summarizing the most important Arabic and English literature, which the researcher was able to reach directly or indirectly, touched on the field of al- fiqh al-ma’ālāt:

(2) Al-Hussain, Walid bin Ali. (2009). I’tibar Ma’alat Al-Af’al wa Atahruha Al-Fiqhi. Riyadh, KSA: Dar Al-Tadmuriyah.

Table 1 Previous Recent Studies in Al-ma'ālāt

| Name | Year of publication | Place and country of publication | The author nationality | Method | Thesis dissertation |
|---|---------------------|---|------------------------|--------------------------|---|
| 1-Ali-Mustafa Ramadan, Entitled-Considering al-ma'ālāt in Islamic law to judge acts Ahbeto,2012, p. 16 | 1976 | - | - | - | Master's thesis Al-Azhar-University in Cairo, |
| 2.Abdullah Lakhdar, postgraduate diploma: Al-Malik's approach inference to Islamic instruments from the University of Mawla Ismail in Meknes-(Ahbeto, 2012, p. 16) | 1987 | - | Moroccan | - | Postgraduate Diploma |
| 3.Al-Dahab Hussein, Al-Ma'ālāt of acts and their Effect on Changing | 1994, | University of Jordan | Jordanian | Descriptive | Master's Thesis |
| 4- Sanussi, Abdul Rahman, considering al-Ma'ālāt taking into account the results of the actions - a comparative study in the origins of jurisprudence and the purposes of Shari'ah | 2004, | Dar Ibn al-Jawzi - Saudi Arabia | Saudi | | Master's thesis |
| 5. Al-Sudais Ibn Abdul Rahman Ibn Abdul Aziz, the rule of considering al-Ma'ālāt and their implications in Islamic jurisprudence and contemporary issues - a study | 2007, | Saudi Arabia Umm al-Qura University in Mecca | Saudi | descriptive | Research |
| 6. Al-Hussein, Walid Bin Ali, Considering the Deeds of al-Ma'ālāt and Their Doctrinal Impact, | 2009 | Dar al-Tadmouriyah, Riyadh Saudi Arabia, 2nd Edition 2009. | | Total inductive | The Origin of The Research Is A Doctoral Thesis |
| 7- Al-Qaradaghi, Ali, -fatwa between text and reliability , fixed and variable - controls and manners, and the Bakassi dimension - with my work on direct fatwas in the media discussed published in the first conference of the fatwa center of moderation, the Faculty of Islamic Studies | 2009, | Qatar by the center of moderation, the Faculty of Islamic Studies | Qatari | Analytical descriptive | Research |
| 8. Bello, Qassim Huzaifa, Impact of Shari'ah Purposes and al-Ma'ālāt of Action in Banking - Applied Fundamentalism | 2009 | Malaysia International Islamic University, Malaysia | - | Inductive and analytical | Master's Thesis |
| 9-Al-jediya, 'Umar -the Origin of Consideration of the Fate between Theory and Practice. The origin of the book is a doctoral thesis from the Faculty of Arts and Humanities Sais-Fez, Sidi Mohamed Ben Abdallah University in Fez, Morocco in 2004 | 2010, | Beirut by Dar Ibn Hazem - Lebanon, First Edition, | Moroccan | Inductive descriptive | Doctoral thesis |

| Name | Year of publication | Place and country of publication | The author nationality | Method | Thesis dissertation |
|--|---------------------|----------------------------------|------------------------|-------------------------------------|---------------------|
| 10. Yili, Tiba Mohammed Abdul Qadir Hamed, Al-Maataand and its impact on the change of Islamic provisions, master's thesis on the origins of jurisprudence- the Faculty of Education, Kordofan University. | 2010 | Sudan | Sudanese | - | Master's Thesis |
| 11- Ahmeto, Youssef Bin Abdullah, the principle of considering the fate_ al-Ma'ālāt in the jurisprudential research from theory to application - the fatwas of transactions in the Maliki jurisprudence - case study - (Shar'ah studies 3), Nama Centre for Research and Studies, First Edition - Beirut - Lebanon | 2012 | Lebanon | Moroccan | Inductive and analytical | Book |
| 12. Benan, Karima, Considering Deeds of al-Ma'ālāt and Its Applications in the Jurisprudence of 'Umar Ibn al-Khattab, master's thesis from The University of Abu Bakr Belkaid- Tlemcen, Algeria | 2015 | Algeria | Algerian | Inductive and analytical | Master's thesis |
| 13-Hamel, Ibrahim, The Rule of Consideration of mua;alat and their Impact on the Fatwa - A Practical Originalstudy- Master's Thesis from the Martyr's University Hama Lakhdar-Wadi, Algeria | 2015 | Algeria | Algerian | Inductive, descriptive, comparative | Master's Thesis |
| 14. Al-Qaradaghi, Ali, fatwa between text and reliability , fixed and variable - controls and manners, and the Bakassi dimension - with my work on direct fatwas in the media discussed published in the first conference of the fatwa center of moderation, the Faculty of Islamic Studies | - | Qatar | Qatari | Inductive and analytical | Research |
| 15- Al-Qaradaghi, Ali, 2017, The Role of the Maqāsid System in the Development of Islamic Banking With Practical Applications - PowerPoint | 2017 | Qatar | Qatari | Inductive and analytical | Research |
| 16- Ishak, Muhammad Shahrul Ifwat; 2018, The Principle of Considering Ma'alat in Islamic Rules:Do Ends Justify Means?, International Journal of Islamic Thought, volume 14. | 2018 | Malaysia | Malaysian | Descriptive | Research |
| 17. Al-Quradaghi, Ali, 2020, A Fate theory of analysis- 1- Economic Analysis, the basis for the analysis of the two approaches - a theoretical study of fundamentalism, to find an Islamic reference for economic analysis - 2021 | 2021 | Qatar | Qatar | critical -Descriptive, analytical, | Book |

From Table 1, the researcher can conclude the following remarks relevant to the research subject matter:

- ❖ For contemporary writers: The oldest research from 1976, and the latest research, of which is due for publication in 2021. The study has been diligently conducted in eight Muslim countries namely Jordan, Saudi Arabia, Algeria, Malaysia, Lebanon, Qatar, Sudan, and Egypt. It technically covered the east, central and western part of the Islamic world. Please see figures below:

Figure 1 Number of Publications per Year

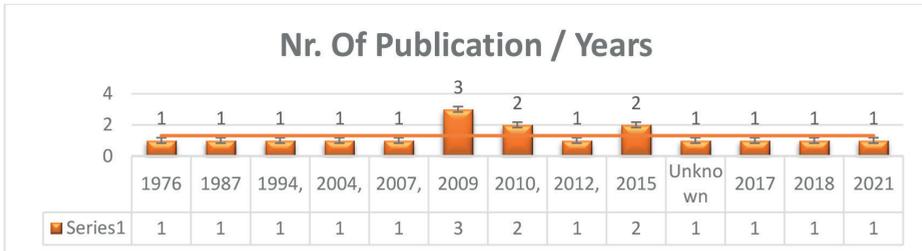
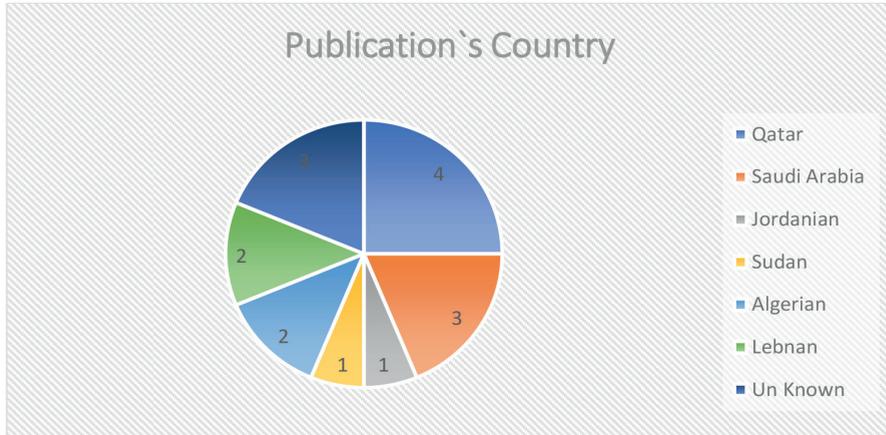
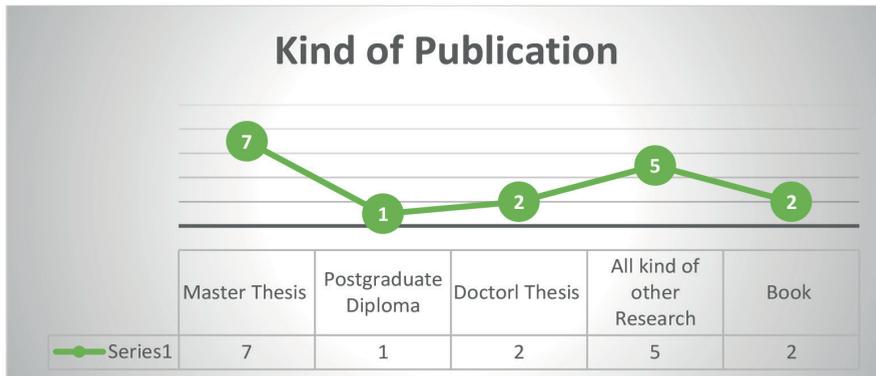


Figure 2 Distributions of the publication in the field of al-Ma'ālāt according to the Countries



- ❖ Many approaches have been applied non-have not been taken out of the descriptive framework.
- ❖ The types of writing formulas in al-ma'ālāt varied from one to another some of which can be seen as one university dissertation, five master's thesis, two doctoral thesis, four types of the research paper, three academic books, one postgraduate diploma, and one postgraduate dissertation.

Figure 3 Kind of Publications



- ❖ Perhaps the increasing interest in al-Ma'ālāt in the modern era is due to the feeling and observation of the people that there is an urgent need to fill the missing gap between theory and reliability , especially between fatwas and their effects and consequences, especially in the field of Islamic economy and finance.
- ❖ This references in the table addressed the issues of al-Ma'ālāt through the following terms:

1. Intent
- 2- Sharī'ah Maxim
- 3- Considering al-Ma'ālāt
4. al-maṣlaḥah/al-mafsadah
- 5- Saad Al-dharāi'
- 6- Al-ḥīyal
7. Istihsan
- 8- Ijtihad based on al-Ma'ālāt
9. Action/ deeds/ Manāṭ Al-af'āl
10. Fatwa change
11. Impact Power/ Quwat al-athar
12. Inclusion of benefit
- 13- AlManāṭ alḥkam
14. Taking into account the difference in the opinion of Figh
15. Restricting a person's right to use his natural right
16. Lifting the embarrassment, Raf' al-ḥraj
17. The presumption/ alQarina
18. assumption Mostly
19. Experience
20. Necessity
21. Al-ta'līl bimā ya'ūlu ilayhi al-ḥukm
21. Explanation of the outcome of the verdict
22. Ijtihad
23. Conflict/ Tarud
- 24- Original Patent

25. Maqāṣid theory
26. Justice
27. Action/ deeds
28. Reliability
29. Result
30. Theory of the motive/ Intention
31. The theory of arbitrariness in the use of the right
- 32- The Precautionary theory
33. The jurisprudence of expectation
34. Jurisprudence of reliability
35. Transactions according to Malīkī doctrine
36. Economic analysis
37. Maqāṣid system
38. Virtual jurisprudence
- 39- Theory of the al-arā'itīyah
- 40- Brainstorming

The researcher notes that most of the terms are related to Uṣūl al-Fiḡh, Fiḡh Almuamālat, Maqāṣid Al Sharī'ah except terminology 36 to 40, where they deal with the contemporary topics whereby try to link al-Ma'ālāt to the new subjects. This indicates earnest attempts by researchers to connect al-Ma'ālāt to the reliability of life and not to let the theory remain in the field of Maqāṣid Al Sharī'ah or fiḡh Almuamālat . There is a need to update and renew the way the alma'ālāt are handled. This study tries to do that to establish study relationship between al-ma'ālāt and RBM, Future Studies; besides, this study asks the stakeholders in the field of Islamic economics to know the pulse of reliability .

- ❖ The authors for those references, addressed the following topics: actions, the consequences of activities, the doctrinal effects, the fatwa, the Islamic rulings, and the jurisprudence of 'Umar Ibn al-Khattab, the theme and the application, the transactions on Malīkī doctrine, the intended system, and economic analysis.
- ❖ These references have mostly addressed the relationship between al-Ma'ālāt and purposes, approbation, pretensions, interest or spoilers, tricks. Most of those references dealt with old doctrinal issues and did

- not address contemporary issues in the present era. It did not support their books with any scientific data figures or facts that supported his method of describing and analyzing.
- ❖ The impact of Maqasid alSharī'ah and its mechanisms of deeds in banking (applied fundamentalist study), by Qassim Haifaz Bello, a complementary research to obtain a master's degree in knowledge of revelation and heritage (jurisprudence and its origins) from the Faculty of Knowledge and Humanities at the International Islamic University in Malaysia, 2009. The research lacks the content for his title beside only using descriptive approach with forcing only on Shariah aspect without other field.
 - ❖ Most of the research articles or books are t repetitive in more than one place.

Conclusion

This paper has been an attempt to reawaken the intellectual community on the need to revive focus on the field of Fiqh al-Ma'ālāt and it was achieved in the paper by casting a glance at the books so far written on the field after presenting a conceptual background on the discipline. The paper revealed that there are so far, contemporary academic works on Fiqh al-Ma'ālāt ranging from books, dissertations and theses and articles conducted in some Muslims countries located in the east, central and western part of the Islamic world. The paper also shows the shortages of the book in Islamic finance field with focusing on al-Ma'ālāt.

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