

Relationship *ushul Fiqh*, *Qowa'id Fiqh* dan *Maqashid Al- Syariah* With Islamic Economy

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Abstract

Current Islamic Economy One of the main challenges is the low level of sharia financial literacy among the public. This causes the public to still have low interest in using sharia financial products and services. Another challenge is the lack of research and development in the field of Islamic economics and the lack of application of Islamic economics in business practices in Muslim countries. Therefore, efforts are needed to increase sharia financial literacy among the public, increase research and development in the field of Islamic economics, and apply Islamic economics in business practices in Muslim countries. Researchers decided to use qualitative research methods. Researchers use qualitative research methods because the opinions of each expert and practitioner are definitely different, a science can be very solution and relevant if applied at one time, but it could be useless if applied at a different time. Ushul fiqh in Islamic economics can be applied not to economics but to an economic system. Because the system is a regulation that requires a basic set of foundations that are qath'i based on revelation. The role of Ushul Fiqh as a methodology for developing economic systems in order to answer all contemporary economic problems. Meanwhile, in its application, Jazuli classifies qawa'id into six different areas, namely mahdhah (special) worship, ahwal as-Syahshiyyah (personal and family matters), mu'amalah maaliyah (economic transactions), jinayah (criminality), siyasah (politics), and fiqh qadhaya (procedural and judicial law). Among the most basic qawa'id in this matter is "All forms of mu'amalah are basically permissible (allowed) unless there is an argument that forbids it." In the economic context, maqashid shari'ah has a dual role, namely: as a control tool as well as a social engineering tool to realize human benefit. It provides a rational philosophical basis for economic activity. Without maqashid shari'ah, understanding and practice of Islamic economics will be narrow, rigid, static and slow. Islamic economics will lose the spirit and substance of its sharia. But on the contrary, with maqashid syari'ah, Islamic economics develops elastically, dynamically, in accordance with the character of Islamic syari'ah which is universal and relevant for all time and space).

Keywords: *Ushul Fiqh, Qawa'id Fiqh, Maqashid Syari'ah, Islamic Economics*

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1. INTRODUCTION

The development of Islamic economics in Indonesia has received a positive response from various parties. Muslim intellectuals in Indonesia, through the Association of Indonesian Muslim Scholars (ICMI), formulated the establishment of Bank Muamalat Indonesia (BMI) as the first sharia bank in 1992. This was the initial history of the birth and development of the Islamic economy in Indonesia. In the early days of the establishment of sharia banks, BMI was able to survive in the midst of the 1997 crisis

which hit all aspects of the Indonesian economy. This achievement is a positive value for Islamic economics to be able to develop even more in Indonesia. The government also responded positively to the development of the Islamic economy, after seeing the achievements made by BMI in this area. The government provides various supports through the issuance of legal products that support and regulate the practice of Islamic economic activities.

Indonesia is ranked first in the Cambridge Global Islamic Finance Report 2021 with the highest score of

83.35. The second and next ranking is followed by Saudi Arabia with a score of 80.67, Malaysia with a score of 80.01, Iran with a score of 79.73, and Pakistan with a score of 60.23. The Director General of the Cambridge Institute of Islamic Finance who is also the Founder of Cambridge GIFR, the Islamic Finance Country Index (IFCI) is a distinctive feature in the 2021 GIFR report. Apart from that, the report also covers various developments in sharia finance globally. Various countries have experienced ups and downs in rankings over the last 10 years, in 2021 Indonesia has emerged as a serious player in the global Islamic finance industry. (Dar, 2021)

Indonesia has received high commitment from the support of regulators, both ministries and collaboration with various institutions. Thus, development programs are harmonized into one goal. This is in accordance with the Indonesian Sharia Economic and Financial Masterplan launched by the National Sharia Economic and Financial Committee. Indonesia is a very strategic player globally. In the last five years, Indonesia's sharia financial industry has become one of the fastest growing among Organization of Islamic Cooperation countries, both in terms of *supply* and *demand*. Currently, the Islamic economy is growing rapidly throughout the world. This can be seen from the increasing number of sharia financial products and services offered by banks and companies, as well as the increasing number of countries implementing the sharia economic system.

In Asia, countries such as Malaysia and Indonesia have long implemented sharia economic systems and have become examples for other countries. In the Middle East, countries such as Saudi Arabia and the United Arab Emirates have also implemented a sharia economic system and have become world sharia financial centers. However, there are still several challenges faced by Islamic economics today. One of the main challenges is the low level of sharia financial literacy among the public. This causes the public to still have low interest in using sharia financial products and services. Another challenge is the lack of research and development in the field of Islamic economics and the lack of application of Islamic economics in business practices in Muslim countries. Therefore, efforts are needed to increase sharia financial literacy among the public, increase research and development in the field of Islamic economics, and apply Islamic economics in business practices in

Muslim countries. That way, the Islamic economy can grow and develop well in the present and the future.

Previous research conducted (Muharir, 2018) stated that Islamic Economics is growing and developing in Indonesia, as an alternative to the economic system that previously existed, namely traditional economics (*municipal*) and *capitalist*. The two existing economic systems are not capable enough to provide a path to a prosperous life for the Indonesian people. The presence of Islamic Economics must of course be able to answer these problems. The institutionalization and organization of the Islamic economic system, both as discourse and practice, must take place in community life. The growth and development of Islamic Economic institutions was initially an urban phenomenon. But recently it has penetrated rural areas. Efforts to develop the role and contribution of Islamic economic institutions in rural areas can take advantage of population conditions in rural areas. Understanding the composition of the population will help in establishing economic institutions, distributing funds and developing various forms of business.

For academics and practitioners of banking and financial institutions, it is not enough just to know muamalah fiqh and its applications, but what is more important is to understand the ushul fiqh and maqashid sharia of every sharia banking and financial product. The science of ushul fiqh provides an understanding of the *istimbath* (determination of Islamic law) methodology of ulama in formulating and determining an Islamic legal problem. The science of Ushul fiqh provides sharia postulates and sharia arguments regarding sharia banking policies, products, systems and mechanisms. The science of ushul fiqh will increase the degree of intellectualism of academics from *taqlid* (*Muqallid*) to *muttabi'*, even ulama can become muftis and mujtahids*. Professors, Doctors and Postgraduate lecturers who lecture on campus, supervisors and regulators at OJK, Bank Indonesia or practitioners who hold important positions in banking (directors, legal division, product development, ALCO, auditors, DPS), as well as consultants, you should know the science of ushul fiqh in the field of financial economics, so that your knowledge in the field of sharia economics is comprehensive and holistic. Because he based his muamalah fiqh knowledge on rational and philosophical reasons, his arguments and postulates based on sharia as well as his maqashid sharia. Maqashid sharia occupies the

most important position in the science of ushul fiqh. Without a maqashid sharia approach, ushul fiqh will dry up and produce dry decisions and decrees.

According to (Agustianto, 2015), Ushul Fiqh is the mother (mother) of all sharia science, therefore ushul fiqh is the mother of sharia economics. Financial muamalah fiqh decisions and all Islamic economic provisions in the macro and micro fields must use the methodology of ushul fiqh science. If muamalah fiqh and all Islamic legal regulations are products of ijtiḥad, then ushul fiqh is a methodology of ijtiḥad to produce fiqh products, fatwas and all forms of regulations, therefore, regulators, regulators and law makers should understand the science of ushul fiqh well. because ushul fiqh is an ijtiḥad methodology to produce muamalah fiqh products, fatwas, regulations and laws. Ushul fiqh is also a sharia scientific discipline that provides the basis and epistemological framework for Islamic economics, so that the study of sharia economic epistemology cannot be separated from the ushul fiqh scientific discipline.

As mentioned above, the study of ushul fiqh in the iqtishad workshop forum is more emphasized on *ushul fiqh* which is charged *maqashid sharia*. So the arguments discussed are generally arguments that have a maqashid sharia dimension. There are at least 11 (eleven) sharia propositions, namely (*Al-Qur'an, Sunnah, Ijma', Qiyas, Istihsan, maslahah mursalah, 'Urf, Sa'ad zariah, Istishab, fatwa companions and syar'u man qablana*). The discussion of the arguments from contemporary actual cases in this training is always inspired by maqashid sharia, as the main guideline in the formulation of Islamic financial law. So further research is needed on how the relationship is *Ushul Fiqh, Qowa'id Fiqh* and *Maqashid Sharia* with Islamic Economics.

2. RESEARCH METHODOLOGY

The researcher decided to use qualitative research methods. Researchers use qualitative research methods because the opinions of each expert and practitioner are definitely different. And also because of the nature of the qualitative approach which says that reality is multiple, complicated, dynamic, and the truth of reality is dynamic (Mulyana, 2013). In addition, qualitative research is a research and understanding process based on a methodology that investigates a social phenomenon and human problem. In this approach, the researcher creates a complex picture, examines words, reports detailed

views of respondents, and conducts studies in natural situations (Creswell, 1988). According to Jane Richie (Moleong, 2006) qualitative research is an effort to present the social world, and its perspective on the world, in terms of concepts, behavior, perceptions and issues about the humans being studied. During its development, qualitative research also received doubts from positivist researchers. According to them, qualitative research cannot be categorized as scientific research, because it does not contain accurate data. However, postpositivist researchers corrected this view. Qualitative research with a post-positivist paradigm looks at a reality more deeply, not only at the surface of a reality but down to the meaning and motives of that reality. Apart from that, researching this phenomenon cannot be done in parts, because reality is part of a whole.

3. DISCUSSION

3.1. *Ushul Fiqh* in Islamic Economics

The word ushul fiqh is a double word derived from the words "ushul" and "fiqh" which etymologically means "deep understanding". While ushul fiqh in its terminological definition is the science of rules and regulations that lead to the formulation of syariah law from its detailed arguments (Syarifudin, 1997). As for this definition presented by Amir Syarifudin. And the following are the definitions of ushul fiqh according to other ushul scholars: Abdul Wahab Khalaf gave the definition that ushul fiqh is the knowledge of the rules and their discussions which are used to establish the syarah laws related to human actions from their detailed arguments (Khalaf, 2003).

Embryonically, ushul fiqh existed even when Rasulullah SAW SAW was still alive, this is based on a hadith which narrates that Rasulullah SAW SAW once asked Muadz bin Jabal when he was sent to be governor in Yemen about what he would do if he had to enact laws while he did not find the law in the Koran or the Sunnah, then Muadz bin Jabal answered in this last question that he would establish the law through his ijtiḥad, and apparently Muadz's answer received recognition from Rasulullah SAW SAW. From this short story, it can be concluded that Rasulullah SAW SAW during his time prepared his friends to have an alternative method of taking law if they did not find it in the Qur'an or Sunnah. However, at this time it has not yet reached its formulation and practice, because if the friends do not find the law in the Koran they can directly ask the Prophet Muhammad. The formulation

of fiqh actually began directly after the Prophet died, namely during the Companion period. Ushul fiqh thinking also existed at the time the fiqh was formulated. Among them are Umar bin Khatab, Ibnu Mas'ud and Ali bin Abi Talib who have actually used rules and guidelines in formulating laws even though they have not been formulated clearly.

The enactment of Law Number 3 of 2006 concerning amendments to Law Number 7 of 1989 concerning Religious Courts has had very broad implications regarding the preparation of Human Resources (HR). This is because the Law gives authority to the Religious Courts to handle cases of zakat, infaq and sharia economics, thereby requiring Religious Court judges to be able to resolve civil disputes that occur in these fields. What is meant by sharia economics are actions or business activities carried out according to sharia principles, namely (Syaifuddin, 2009)

- a. Islamic Bank; Banks that carry out their business activities based on sharia principles and according to their type consist of Sharia Commercial Banks and Sharia Rural Banks.
- b. Sharia Insurance/Ta'min; An agreement between two or more parties, in which the insurer binds itself to the insured by accepting a premium to receive compensation to the insured for loss, damage or loss of expected profits, legal liability to third parties that the insured may suffer arising from uncertain event.
- c. Sharia Reinsurance
- d. Sharia/Suk maliyah Mutual Funds; Non-bank financial services institutions whose activities are oriented towards investment in the portfolio sector or the collective value of securities
- e. Sharia Bonds and Sharia Medium Term Securities; Securities issued based on sharia principles as proof of investment in valuable assets both in rupiah and foreign currency. Letter of acknowledgment of financing within a certain period of time in accordance with sharia principles
- f. Sharia Securities; A collective name for various types of securities, for example: shares, bonds, mortgages or securities in accordance with statutory regulations in the field of capital markets where contracts, company management, and the method of issuance comply with sharia principles
- g. Sharia Financing/Nuquq i'timani; Provision of funds and/or bills based on mudharabah or

musyarakah contracts and/or other financing based on the principle of profit sharing.

- h. Sharia Pawnshop/Rahn; Control of the borrower's property by the lender as collateral.
- i. Sharia Financial Institution Pension Fund/Sundug mu'asyat taqa'udi; Business entities that manage and run programs that promise pension benefits based on sharia principles.
- j. Sharia Business Polite business, business full of togetherness and respect for each other's rights.
- k. Corporate Sharia Microfinance Institution that collects third party funds and provides financing to customers, both bank and non-bank.

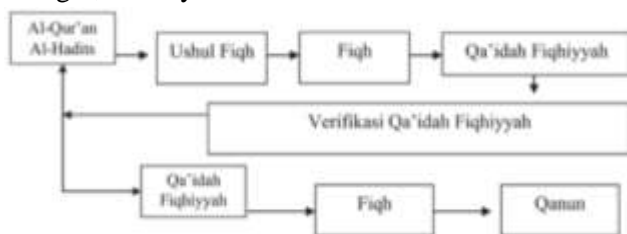
Ushul Fiqh and its Relevance to the Development of Sharia Economic Law Islamic legal theory (ushul fiqh) is a traditional scientific discipline that has a very important position in the development of Islamic law. In this scientific discipline, the discussion regarding the basic ideas or scientific paradigms and rules that are very necessary as a basic basis for the desired legal formulation are discussed thoroughly. In other words, ushul fiqh is the limu discipline that is most responsible as the most competent methodological device for compiling, forming and giving the expected style of Islamic law, especially regarding Islamic law related to economic issues which are things that have a big influence on human life. Therefore, it is not an exaggeration to say that the ushul fiqh methodology for developing a concentration in the study of Sharia Economic Law is a necessity that cannot be negotiated. The function and use (axiology) of ushul fiqh as previously explained is to capture the meaning in the syar'i text so that it is in accordance with syar'i wishes, so that it can answer the problems that arise.*up to date* even if it is as desired. However, the problem does not stop here. Because it turns out that many Muslim scholars feel intellectual anxiety when they look at Islamic law which has been formulated by classical scholars. Some, such as Munawwir Sjadzali, Fazlur Rahman, Abdullah an-Na'im et al, consider that legal formulations in several sapek have experienced a crisis of relevance, especially when linked to international human rights standards. The saddest thing in such conditions is the emergence of a stigma against the renewal of ushul fiqh which according to Munawwi is really no longer relevant. Departing from this phenomenon, efforts to reform Islamic law have become a necessity. This effort has been made by Hasan at-Turabi in his work Tajdid aal-Fikr al-Islam.

According to him, a science can be very solution and relevant if applied at one time, but it can be powerless if applied at a different time. Apart from at-Turabi, it has also been done by many other religious scholars. In essence, they argue that the renewal of ushul fiqh also needs to touch on substantial aspects which include ontology and epistemology.

3.2. *Qowa'id Fiqhon Macroeconomics*

In *Dictionary of Modern Written Arabic*, work Milton Cowan (ed) the word qa'idah (قاعدة) or jama'nya qawa'id (قواعد) literally means: principle, basis, basis, basis or foundation of a building or religious teaching and so on. In a more typical sense, qa'idah can also mean teachings, guidelines, formulas, patterns or methods. Qa'idah has the same meaning as 'principles' or 'principles' that underlie a building, religion or something similar (Nadwi, 1412H/1991).

Based on research into the books and the life histories of their compilers, the rules of fiqh in the form of qa'idah can be compiled through a long process and are not formed as a body of knowledge about qa'idah all at once, but rather gradually (Djazuli, 2006) According to Jazuli, before al-Karkhi from the Hanafi madzhab, there had previously been a collection of qa'idah, but it does not seem to have been compiled into a systematic work, by another Hanafi madzhab cleric, namely Abu Thahir ad-Dibasi who lived at the end of the 20th century. 3 Hijriyah until the beginning of the fourth century. A total of 17 qa'idah were compiled by ad-Dibasi, which were then also conveyed to a scholar of the as-Shafi'i school of thought, namely Abu Sa'id al-Harawi.



Picture 1 Metode Qawa'id

Qawa'id is prepared based on fiqh materials, then verified to obtain more perfect qawa'id results, then re-arranged fiqh as a completeness of the existing fiqh treasures, then the legal provisions become the final result of the process.

Qawaid Fiqhiyyah Concerning Macroeconomics, one of the things he pays attention to is the muamalah maaliyah or iqtishod macro sector, therefore it is an inseparable (integral) part of the Islamic religion. Islam views economic activity positively. The more

people are involved in economic activities, the better, as long as the goals of the process are in accordance with Islamic teachings. Devotion to God does not have implications for reducing economic productivity, on the contrary, it actually leads a person to be more productive. Wealth can bring you closer to God as long as it is obtained in ways that are in accordance with Islamic values. where the benefit aspect is seen as an aspect that must always be upheld as the goal in maqashid sharia. In this regard, Islam also highly respects economic activities, which include market mechanisms. To the extent that the Prophet forbade any intervention in markets and prices, because such intervention would only create an imbalance in the market which it was feared would cause losses for sellers and buyers. As the Prophet said:

عن أنس رضي الله عنه قال: غلا السعر على عهد رسول الله

صلى الله عليه وسلم فقال: الناس يا

رسول الله غلا السعر فسرعنا. فقال رسول الله صلى الله

عليه وسلم: إن الله هو المسعر القابض

الباسط الرازق. وإني لأرجو أن ألقى الله وليس أحد منكم

يطلبني في دمر ولا مال. رواه الخمسة

إلا النسائي وصححه ابن حبان وقال أبو عيسى الترمذي

حديث حسن صحيح:

Based on the hadith above, price intervention is actually prohibited in Islam. However, if it is taken to a broader scope at a macro level, then government intervention is permissible in practice considering the concerns, namely, to prevent speculators from carrying out monopolistic practices in certain commodities by making efforts, and also so that people's purchasing power does not decrease and there are concerns about the dangers. hunger that leads to destruction.

3.3. *Maqashid Syari'ah in Islamic Economics*

Maqashid syari'ah is the essential aim of the revelation of shari'ah ('Audah, 2013). (Al-Fasi, 1963) in the book Maqashid as-Syari'ah al-Islamiyah wa Makarimuha defines maqashid shari'ah with the expression: " الغاية منها و الاسرار التي وضعها الشارع عند كل حكم من احكامها " (The aims and secrets of the Shari'ah which have been laid down by law maker [Shari'] in

every law) and Ar-Raisuni in the book *Naẓariyyat al-Maqashid* 'Inda al-Imam as-Syatibi (2003,7) defines it with the expression: "تحقيقها لمصلحة العباد," (Objectives that have been laid down by the shari'ah to be investigated for man-made good).

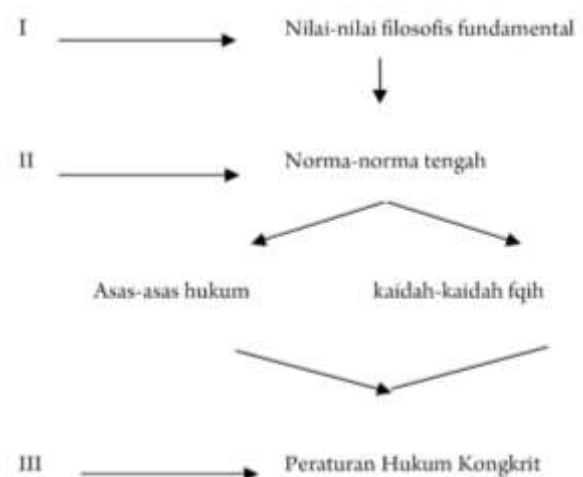
Maqashid Syari'ah as a Basis for the Development of Islamic Economics Currently, Muslims are faced with contemporary economic problems due to the development of human civilization and advances in Science and Technology (IPTEK). The rise of a variety of economic activities with various complex forms has given rise to problems in Islamic law among Islamic law experts. This problem of Islamic law must not be confronted confrontationally with texts that do not explain it, but must be resolved *ijtihadi*, because Islam has provided its normative design globally. This *ijtihad* is an active, creative, solution and productive effort in building economic life. Due to legal problems in the field of *mu'amalah*, as long as the legal objectives (*maqashid syari'ah*) are known, legal developments can be carried out.

According to Syafrudin Prawiranegara, in fact the economy is the same everywhere, the only difference is morals. Meanwhile, Musa Asy'ari is of the view that economics is part of culture, because it is integral to the value system, both theology, cosmology and anthropology. The economy and this value system are difficult to separate because they involve the most abstract human knowledge and experience to the most detailed daily transactions. So, economic issues originate from morals and the economy offered by Islam is an economy developed based on Islamic morality. This is because the Qur'an is a revelation which from beginning to end always provides the moral pressures necessary in life (Abdullah, 2004). In this context, Malik Firza and Nabil Baydoun (2000: 5), say: Businesses in the Islamic society are no different. They are expected to adhere within the legal framework of the country and its political environment. In Islam, trading is highly honored as Allah proclaims (An Nisa 4:33). Islam permits reasonable profits, although not excessive to prevent exploitation. The Western world recognizes Corporate Social Responsibility while Islam goes beyond the social context where Allah is the owner of all wealth.

The goal of life in Islam is happiness and glory (*falah*) in all dimensions and comprehensively, both materially and spiritually, individually and socially, in

this world and the hereafter. Economics is one of the instruments that is expected to be able to bring humans to their life goals. In the world context, *falah* is a multidimensional concept that has implications for aspects of individual/micro behavior as well as collective/macro behavior. *Falah*, a happy and noble life in this world and the hereafter, can be realized if life's needs are met in a balanced way. The fulfillment of these needs will bring about an effect called *mashlahah*, namely all forms of circumstances, both material and non-material, which are capable of increasing human position as the most noble beings. According to al-Gazali and as-Syatibi, basic *maslahah/daruriyyah* for humans is very necessary for both worldly and spiritual life (Praja, 2015).

Furthermore, to formulate sharia economics in the contemporary context, Syamsul Anwar interprets sharia by dividing it into 3 (three) layers, namely: basic norms and philosophical values (القيام الأساسية), general principles (الاصول الكلية), and regulations concrete (الاحكام التطبيقية). Basic values are abstract and universal and at the same time describe the fundamental points of Islamic teachings such as monotheism, goodness, justice, equality, deliberation and others. General principles are intermediate norms that lie between and at the same time bridge basic values with concrete legal regulations; or concretization of basic values which are abstract and usually formulated in the general principles of Islamic law (النظاريات الفقهية) and the rules of Islamic law (القواعد الفقهية). and the values above it (Anwar, 2002) as seen in the scheme below:



Picture 2. Basic norms and philosophical values

In the context of this level, Islamic economics is built on the basis of assumptions at the top layer which originate from the Qur'an and hadith, where human rational reasoning captures the top level assumptions

deductively and tests them with empirical facts in real life inductively (Praja 2015, 65–67). In other words, the procedure for deducing economic statements comes from ethical axioms which produce a series of hypotheses that can be tested, so that economic fuqaha' are able to discuss new problems by integrating ethics, morals and economics into a single frame-work (Naqvi, 2009).

4. CONCLUSION

Ushul fiqh in Islamic economics can be applied not to economics but to an economic system. Because the system is a regulation that requires a basic set of foundations that are qath'i based on revelation. The role of Ushul Fiqh as a methodology for developing economic systems in order to answer all contemporary economic problems. Meanwhile, in its application, Jazuli classifies qawa'id into six different areas, namely mahdhah (special) worship, ahwal as-Syahshiyah (personal and family matters), mu'amalah maaliyah (economic transactions), jinayah (criminality), siyasah (politics), and fiqh qadhaya (procedural and judicial law). Among the most basic qawa'id in this matter are

الأصل في المعاملة الا با حة حتى يدل الدليل على تحريمها

"All forms of muamalah are basically mubah (permissible) unless there is evidence that prohibits them".

In the economic context, maqashid syari'ah has a dual role, namely: as a control tool as well as a social engineering tool to realize prosperity. human power. It provides a rational philosophical basis for economic activity. Without maqashid shari'ah, understanding and practice of Islamic economics will be narrow, rigid, static and slow. Islamic economics will lose the spirit and substance of its sharia. But on the contrary, with maqashid syari'ah, the Islamic economy develops elastically, dynamically, in accordance with the character of Islamic syari'ah which is universal and relevant for all time and space (صالح لكل زمان و مكان).

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