

HĀJAH IN ISLAMIC FINANCE: MASTERING THE DOCTRINE OF NEED IN SHARĪ'AH DECISION MAKING

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Abstract

Islamic financial institutions (IFIs) are compelled to operate in a highly regulated environment without jeopardizing the Sharī'ah governance framework. To deal with arising challenges, Sharī'ah decision-makers sometimes rely on the doctrine of ḥājah (need) as a device to enact a concessionary ruling. However, critiques argue that ḥājah has been used as a pretext to circumvent Islamic commercial law. This paper is an attempt to develop a possible criterion for making a legitimate need based Sharī'ah solution for IFIs. The study is based on qualitative research. Using content analysis, the classical literature of Islamic jurisprudence was reviewed to analyze the concept of ḥājah, its legitimacy, and its Sharī'ah rulings in the perspective of Islamic banking. The research concluded that a Sharī'ah vetted ḥājah can be leveraged by Sharī'ah decision-makers as a tool to address a legitimate challenge faced by individuals or corporations keeping in view the proposed parameters. To substantiate the parameters in the context of Sharī'ah decision-making in Islamic finance, practical examples have been analyzed from the Sharī'ah Standards issued by the Bahrain-based Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI).

Keywords: Islamic Finance, Sharī'ah, ḥājah, need, Sharī'ah decision-making

INTRODUCTION

Financial affairs have become an integral part of modern life, which essentially involves dealing with banks, financial institutions, and money markets. However, the financial services sector as a highly regulated industry by local and international authorities often requires exceptional treatment to be compatible with the Sharī'ah principles and rules. To accommodate such pressing challenges, classical jurists have outlined several parameters under the doctrine of ḥājah. It is a legal tool whereby a concession is justified by the dire need of preserving something of greater utilitarian value than that lost, neglected or sacrificed.

The scholars of Islamic finance at a time rely on the doctrine of ḥājah in Sharī'ah decision-making (SDM). Sharī'ah decision-making is defined as a process to identify a Sharī'ah-compliant and economically

viable solution to a problem faced by an Islamic financial institution (IFI), with a systematic course of action that is also in line with the Shari'ah (Agha, 2020). However, some critics consider over-reliance on the maxim of need in SDM as a pretext for violation of Islamic commercial law (Zakariyah, 2012). They also argue that *hājah* in SDM is used extensively as a legal device without appreciating its historical and contextual framework since the classical jurists inclusively used it for individuals, not corporations and legal entities.

A review of the Islamic finance literature also reveals that some writers have mixed up the concept of *darūrah* (necessity) with *hājah*. While some others have confused *hājah* as an *uṣūlī* term (Islamic jurisprudence) with its *feqhī* (Islamic law) concept. Against these backdrops, this article attempts to define *hājah* in the context of financial services and products along with a guiding framework for the right usage of the doctrine of need in SDM.

RESEARCH METHOD

This study is based on qualitative research. Using content analysis, the classical literature of Islamic jurisprudence was reviewed to analyze the concept of *hājah*, its legitimacy, and its Shari'ah rulings. The *hājah* parameters are developed by deploying inductive analysis of the juristic scholarship on the doctrine of need. To substantiate the parameters in the context of SDM in Islamic finance, practical examples have been analyzed from the Shari'ah Standards issued by the Bahrain-based Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI).

The Doctrine of *Ḥājah* in Islamic law

Ḥājah literally means 'need'. Technically, in the literature of Islamic jurisprudence, the term has two meanings.

1. In the context of *maqāṣd* (the objectives of Shari'ah) and Islamic jurisprudence (*uṣūl*), Imām Shāṭebī defined it as

أنها ما يفتقر إليه المرء من حيث التوسعة ورفع الضيق المؤدي غالباً إلى الحرج والمشقة

"complementary interests (arrangement); people need them in terms of expansion and to remove the hurdle often leading to severity and hardship which cause the loss of Shari'ah objective" (Al-Shāṭibī, 1997). The contemporary scholar Ibn 'Āshūr described it more comprehensively, "*hājah* consists of what is required by the people for the realization of their interests and the proper execution of their affairs" (Ibn 'Āshūr, 2006). *Ḥājah* is the second category in the hierarchy of *maṣlaḥah* as per Imām Shāṭebī's classification. It stands between necessity (*darūrah*) and

embellishment (*taḥsīniyah*). Unlike *darūrah* whose rejection results in total disruption and chaos, the neglect of *ḥājah* does not lead to such a collapse in social and personal life. However, as opposed to the accomplishment of *taḥsīniyah*, the avoidance of *ḥājah* causes difficulties and hardship (Laldin et al., 2013). In this context, *ḥājah* is sometimes translated as ‘complementary’ since it is a category of *maṣlahah* that complement the interest at the level of *darūrah*.

2. **In fiqh literature**, Fuzī (2018) defined *ḥājah* as: هو افتقار فرد أو أفراد محصورين إلى شئ لأجل التوسعة ورفع الضيق والمشقة، مما يخالف الأدلة او القواعد الشرعية.

“ḥājah is the need of an individual or a group of particular individuals to something in order to expand and relieve distress, and to remove hardship in a way that contradicts with the Sharī‘ah evidence or rules”. Hence, it can be summarized that *ḥājah* in fiqh refers to a state of compelling situation below necessity that requires relaxation in the original ruling on the grounds of human need, while *darūrah* (necessity) is a state of emergency and survival that demands a departure from a standard Sharī‘ah ruling such as eating pork and drinking alcohol, etc. In this paper, *ḥājah* is discussed from the fiqh perspective, which in the context of contemporary banking and financial transactions indicates a situation where –without resorting to a specific approach– either (1) contracting parties cannot fulfill their commercial/ financial needs, or (2) a transaction cannot be performed. Examples of the first type of *ḥājah* are adhesion contracts, syndicate financing, raising corporate funds and investment accounts, etc. While examples of the second type could be import and export trading that requires a specific business procedure as per the applicable internal and local regulations such as Letter of Credit (LC) and goods insurance etc.

The Legitimacy Of Ḥājah-Based Ruling

The universe is evolving continuously, and change is the only constant. The dynamics of life affect individuals, societies, corporations, and businesses alike. Sharī‘ah as a comprehensive legal framework has the capacity to address the challenges and new normal situations arising from such changes either by enabling a new rule or modifying the existing legal structure. Therefore, Muslim jurists have provided a set of concessional rules under the doctrine of *ḥājah* to support the social vehicle keeps moving. It enables the affected individuals to actualize a legitimate

goal without jeopardizing the Shari‘ah rules (Al-Mutairi, 1995).

In a business transaction, an example of the *hājah*-based ruling could be the famous Prophetic narration: “لا تبع ما ليس عندك” “do not sell what you do not possess” (Al-Tabrizi, 2000). This is a general principle in sale transactions. Ibn ‘Abbās narrated that when the Prophet (PBUH) migrated to Medina, he observed that people are conducting forward sale of dates where the price is paid upfront with delayed delivery for a certain period keeping in view the harvesting session. This practice explicitly violates the above-mentioned narration since the seller sells dates before possession. However, considering the need of farmers for cash as working capital, the Prophet (PBUH) allowed this practice as a concession from the general sale rules with certain parameters stating:

من أسلم فليسلم في كيل معلوم ووزن معلوم إلى أجل معلوم

“whoever is paid in advance (for a commodity, it should be) for a specific volume or a specific weight (to be delivered) on a specific date” (Al-Nishapori, 2007).

Another example is the concession manifested in the permissibility of *bay‘ al-‘arāyā* (sale of fresh dates on trees for dried dates on the ground). The Prophet (PBUH) stipulated that if a date is exchanged for a date, it is allowed provided that the counter values must be exchanged on spot with equal quantity (Al-Tabrizi, 2000). In the sale of dates on trees against dried ones, the exact quantity cannot be ascertained, which eventually leads to a type of *Ribā* known as *Ribā al-faḍl* (interest of excess commodity in *rebawī* items). Nevertheless, the Prophet (PBUH) exempted this sale from the general ruling due to poor people’s need for fresh dates. This is also an exemption from the Prophetic narration prohibiting a sale where a known item is sold for an unknown one from the same genus (*bay‘ ul muzābanah*) (Al-Bukhari, 2010).

This type of exemption establishes a legal doctrine that Islamic law takes accounts of human needs in an ever-changing social and economic environment, substantiating the Qurānic statement:

يريد الله بكم اليسر ولا يريد بكم العسر

“Allah intends every facility for you; he does not want to put you in difficulty” (2:185). Based on similar textual evidences, jurists have developed the maxims of (1) رفع الحرج (removing hardship), (2) المشقة تجلب التيسير (adversity brings ease), (3) the principle of *maṣlahah* (public interest) and (4) *rukḥṣah* (concession). These maxims entail that in certain cases, the original law—if causes unfeasible and unusual hardship—is relaxed. Similarly, the principle of *istiḥsān* (juristic preference), as described by al-Ṣarakhsī, justifies leaving an obvious analogy to provide comparatively

an easier option to the people (Al-Sarakhsi, 1986). Hence, the doctrine of *ḥājah* (need) denotes Islam's concern for relieving hardship by providing relaxation in default rules, throughout the full range of human life.

Types of *Ḥājah*

Ḥājah is classified into 'public need' and 'private need'. The public need is a pressing need that involves society, such as the need for *istisnā'* (manufacturing contract), *Salam* (advance payment sale with deferred delivery), *istijrār*, and other industrial, agricultural, business or transportation needs. On the other hand, a private need refers to a need faced by individuals or a certain group of people and professions such as the need for insurance/takaful for traders (AAOIFI Standard No. 41).

The Difference between *Ḥājah* and *Ḍarurah* based Shari'ah Ruling

It should be taken into consideration that sometimes jurists use *ḥājah* and *Ḍarurah* interchangeably as a matter of tolerance in the language (Niyazee, 2013). For example, if a person is starving without the risk of death or injury, he is not allowed to eat prohibited things. However, if his starvation creates the risk of death or injury, he is legally obliged to consume prohibited food. Scholars may use the term *ḥājah* or *Ḍarūrah* for both cases, but technically, the former is *ḥājah* and the latter is *Ḍarūrah* (Zaidan, 2000).

However, from a legal standpoint there are a number of differences between their rulings (Al-Sarakhsi, 1986):

1. *Ḍarūrah* provides a departure in case of necessity from a standard Shari'ah ruling (based on direct Shari'ah text and definitive evidence) such as eating pork or drinking alcohol which is primary prohibitions.
2. Unlike *Ḍarūrah*, *ḥājah*, principally, does not render a primary prohibited action as permissible; rather it permits to override only secondary prohibitions i.e., permissible acts that are prohibited for the sake of blocking the means — سدا للذريعة — (as a safety feature to avoid indulging into direct prohibited actions) (Ibn-Qayyem, 2002). For example, excessive *gharar* is prohibited since it leads to a dispute. However, a Shari'ah vetted *ḥājah* supersedes the prohibition of *gharar* in a commutative transaction when no alternative is available and there is a regulation or social need such as commercial insurance in the absence of takaful (AAOIFI Standard No. 31, 4/4).

3. Similarly, *hājah* also justifies a departure from a general *fiqh* ruling (derived from analogy/*qiyās* or exertion/*ijtehad*) to a concessionary one in order to accommodate the human need when the original law results in an unusual hardship. For example, OIC *Fiqh* Council (2000) passed resolution no. 50/1/6 that considers owning a house as a basic human need (*hājah*). However, the council categorically prohibited interest-based home financing on the ground that “this method is based on *ribā* (interest) transaction, and it cannot be allowed based on *hājah*, because *hājah* cannot make *ḥarām bi al-dhāt* (primarily prohibited) things permissible”.

However, the concession depends on the nature of the *hājah*. A public *hājah* grants more leeway to avail a concession than a private *hājah*. This is due to the fact that the concession in the case of public *hājah* is granted by Sharī‘ah with an open-ended statement. Such as the permissibility of *ijārah* and *salam* contracts on the basis of public need is an exemption from the general rule – “do not sell what you do not have”.

Whereas the text that has given flexibility based on private *hājah* is subject to the hardship faced by an individual. For example, wearing silk is prohibited for men. However, the Prophet (PBUH) granted a concession to some of his companions to wear silk when they suffered from scabies and itches. Therefore, in contrast to a public *hājah*, a concession in private *hājah* can be used only in proportion to the person’s actual need (Laldin et al., 2013).

4. *Darūrah* and specific *hājah* driven concession are time-bound and applicable only to the individual/s dealing with the situation, while in the case of public *hājah*, the ruling is universal and perpetual (Al-Shātibī, 1997).
5. *Hājah* also provides exceptional concessions in a subsidiary sale (*al‘aqd al-dhemnī*) such as waiving of the requirement of offer and acceptance and tolerance of ambiguity of the subject matter in a subsidiary sale (AAOIFI Standard No. 25 2/5).

DISCUSSION

The foregoing discussion indicates that Sharī‘ah as a legal framework takes into account the evolving social environment and business landscape. Ibn-Qayyem (2002) rightly articulated that justice is not served by the formal application of Islamic law regardless of circumstances that may present pressing situations of necessity and need. Therefore, jurists

formulated several legal maxims and principles to facilitate Sharī'ah decision-makers in assessing a pressing need in society.

Nevertheless, it shall be noted that the doctrine of *hājah* in Islamic law is primarily discussed by scholars in the context of individuals. For this reason, some scholars believe that need based Sharī'ah rulings do not apply to legal entities such as modern corporations and financial institutions. They argue that Sharī'ah sources have provided concession (*rukhsah*) against hardship and impediment faced physically by individuals (*nafs*). As far as the challenges of legal entities such as financial institutions are concerned, they are principally related to wealth (*māl*) and Sharī'ah concessions are not applicable to wealth accumulation (Islamic Economic Forum, 2020).

However, there are several examples where the AAOIFI Sharī'ah Standards (2017) assigned *hājah* based rulings to financial institutions to enable them to navigate through a difficult situation with the support of exceptional concessions. From this perspective, it can be argued that the doctrine of need may constitute a base for SDM in legal entities and financial institutions in case of a pressing need. Nevertheless, a legal entity will not enjoy concession resulted from *hājah* as an independent beneficiary, rather as a tool to serve a legitimate interest of the individuals, the society as a whole or to ensure the higher objectives. For example:

1. **Serving the interest of the individuals:** a trading company may be given relaxation for a certain period to avail conventional transit insurance in the absence of a takaful facility or takaful facility that is not commercially viable. This serves the interest of shareholders and owners of the firm to manage their risk exposure.
2. **Serving the interest of the society:** it is a well-established maxim in fiqh that *الحاجة تنزل منزلة الضرورة عامة كانت أو خاصة* "a legitimate public need is treated like a necessity" (Laldin et al., 2013). A legal entity may become a means to fulfill that need. For example, providing a Sharī'ah compliant insurance coverage is a public need, for which establishment of takaful institutions is required. To sustain the operation of a takaful company, it also requires reinsurance coverage. In the absence of a re-takaful company, AAOIFI (Standard No. 41, 3/2) allowed to reinsure with traditional reinsurance company as a transitional arrangement on the ground of "practical necessity arising from the lack of Islamic reinsurance coverage and dire

public need which ranks up as necessity". Hence, this concession supports takaful firms to fulfill the public need effectively.

3. **Ensuring the higher objectives:** for deploying a *hīlah* (legal stratagem) in the context of legal entities, often, jurists prescribe controls that are influenced by the conditions prescribed for enacting a *hājah* based ruling for individuals. For example, *tawarruq* (monetization) is a permissible mechanism to achieve liquidity through the purchase and subsequent sale of a lawful asset. liquidity management is a serious challenge for the majority of IFIs due to the limited Shari'ah compliant investment avenues. AAOIFI (Standard No. 30) allowed IFIs to manage their liquidity through *tawarruq* provided that it shall be treated as the last resort. Clause No. 5/1 states:

"Monetization is not a mode of investment or financing. It has been permitted when there is a need for it, subject to specific terms and conditions". Hence, *tawarruq* despite being a permissible mechanism is governed by the above conditions to ensure – as the Shari'ah basis of the standard states – "Islamic financial institutions fulfill the core objective of their establishment" and to "curb any tendency for expending *tawarruq* to the extent that jeopardizes the extensive use of the original modes of investment and financing (such as *muḍārabah* and *mushārahah*, etc.)".

The above discussion leads to an important question, what are the criteria (*ḍawābit*) for making a need based Shari'ah decision in IFIs? Imām Shāṭibī categorically stated that not every human need begets facility, nor every hardship forms a basis for a concession in Shari'ah rulings. Thus, both shall be subject to certain rules and conditions in order to become a means for a concession (Al-Shāṭibī, 1997).

Hājah is a subjective judgment that can neither be quantified nor predicted in advance as the underlying assumptions vary according to time and circumstances. A concession given due to *hājah* may be beneficial at a certain time and conditions, and useless at another. Therefore, for a *hājah* to qualify in Islamic law as a cause for facilitation, jurists laid down several conditions. The following section attempts to summarize the controls suggested by classical Islamic jurists in dealing with *hājah* and to assess their relevance in the context of need based

Shari'ah decision-making in IFIs. These parameters are designed to ensure that *hājah* does not become an instrument of arbitrary desire or individual bias in Shari'ah decision making.

Hājah Parameters

1. The Hājah Must Be Real, Not Imaginative

For a *hājah* to be a justification for a departure from a general *fiqh* ruling (derived from analogy/*qiyās* or exertion/*ijtehad*) to a concessionary one, firstly, the need must be factually correct either with absolute certainty or with reasonable probability, indicating that people will face hardship if a concession is not provided (Al-Musooah, 1998). In other words, *hājah* based Shari'ah decision shall not be made based on assumptions, because a mere suspicion or plausibility (*tawahhum*) does not enact concessionary legislation (Al-Suyuti, 1973). For example, most scholars believe that a bilateral promise is not binding in Islamic law. However, an exemption may be given in line with AAOIFI in cases where a transaction cannot be proceeded without making a bilateral promise a binding one by virtue of local or international law, norms, customs, or otherwise. Such as in the case of the LC agreement, the bilateral promise is perceived binding according to the international trade norms.

Secondly, the hardship shall be beyond a trivial discomfort causing difficulties in social and personal life as per customary practices (Al-Shātibī, 1997). The determination of the severity of the hardship is left to the discretion of the individual undergoing it. As far as the normal distress is concerned, it is not a proper ground to leverage a concessionary ruling. For example, AAOIFI (Standard No. 30) allowed *tawarruq* with a condition that "institution shall resort to monetization only when it faces the danger of a liquidity shortage that could interrupt the flow of its operations and cause losses for its clients".

For the consideration of this parameter in SDM, Shari'ah decision-makers should develop a very clear criterion to ascertain the actuality of the need, its significance, relevance, and magnitude of the resultant hardship. They may benefit from the relevant accessible statistical studies and empirical research which should be analyzed from a Shari'ah perspective before granting a concession. It is the responsibility of the beneficiary of the concession to provide solid evidence of the need and its potential impacts to enable the Shari'ah decision-makers to assess the situation objectively.

2. Non-availability of Alternatives

Flexibility in the original ruling is given only when there is no other

permissible way to accomplish the task (Al-Zuhaili, 1985). For example, AAOIFI allowed takaful companies with certain conditions to reinsure with traditional reinsurance companies as a transitional arrangement. One of the conditions is that the takaful companies should try their best to reinsure first with Islamic reinsurance companies (Standard No. 41, 6/1). Therefore, the concession is provided only in case of non-availability of Islamic reinsurance.

In the same vein, AAOIFI (Standard No. 30) allowed the use of tawarruq as the last resort. Clause No. 5/1 states: “(the institutions) shall exert no effort for fund mobilization through other modes such as *muḍārabah*, investment agency, Sukuk, investments funds, and the like”. When a customer is beneficiary of tawarruq (such as in the case of personal financing, debt restructuring, hedging, or Islamic credit card structured on tawarruq mode), the Sharī‘ah basis of the standard states “they (institutions) shall also restrict the use of monetization to the cases of clients whose transactions cannot be disposed of through other modes of financing and investment such as *mushārah*, *mudhārabah*, *ijārah*, *istiṣnā’* and the like”.

To incorporate this requirement in SDM, Sharī‘ah decision-makers should ask the relevant team to present an exploratory report/ briefing on the feasibility of Sharī‘ah compliant alternatives. This is to ensure that a concession will be provided only if either the alternative is not available, commercially not feasible, or does not serve the need. If the beneficiary is a customer of an IFI, he may provide an undertaking on the non-availability of alternatives. The in-house Sharī‘ah research function may support the Sharī‘ah decision-makers in analyzing the best market practices and solutions provided by academicians and research firms.

3. The Intended Benefit (Maṣlahah) Shall Be in Harmony with Sharī‘ah and Shall Be Weightier Than Any Harm Associated with It

The purpose of a concessionary ruling in need cases is to serve an individual or public interest (*maṣlahah ‘āmmah*). To validate reliance on *ḥājah*, the intended benefit shall fulfill the following three conditions:

- 1) *It shall not contradict with the absolute provision of Sharī‘ah*: The legal maxim states الرخص لا تناط بالمعاصي “Sharī‘ah concessions cannot be granted for sins” (Ibn Nujaym, 1985). for example, *Ribā* (interest) which is explicitly prohibited in Qurān and Sunnah, cannot be legalized on the ground that it has become a base for the modern financial system.
- 2) *the end result shall not constitute a prohibited talfiq (eclecticism)*:

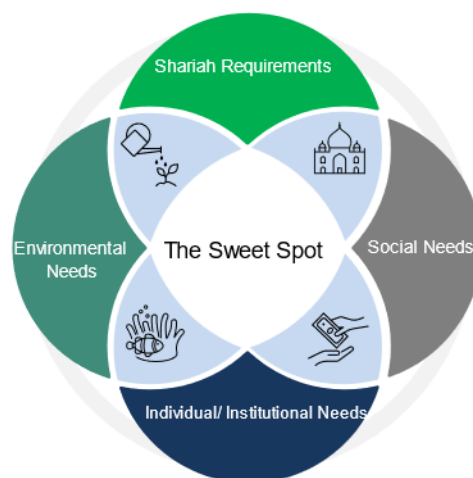
AAOIFI Standard No 29. 8/4 explicitly prohibited amalgamation of different *fiqh* opinions in SDM in a manner where no jurists permit it: “it has to be ensured that making use of the Shari‘ah exemption does not embody a related act that the *Fuqahā* (jurists) unanimously consider as prohibited, or lead to issuing different Fatwas for two identical incidences. Misuse of Shari‘ah exemptions in this manner is known in *fiqh* as ‘*talfiq*’ (*eclecticism*)”.

- 3) *attainment of such interest shall not lead to the negation of greater interest*: it implies firstly, that there must be a reasonable probability that the benefit of enacting a concessionary ruling in the pursuance of *hājah* outweigh a negative impact that might result from it (Al-Juwaini, 1980). Secondly, the public interest shall be prioritized over individual interest.

This parameter requires the Shari‘ah decision-makers to assess, on one hand, compatibility of the concession with the absolute Shari‘ah provisions and juristic heritage and on the other hand, critically evaluate dynamics of the result and its consequential impacts on the society, public, and planet. A short-term individual or institutional benefit cannot be actualized at the expense of a greater long-term negative social or environmental impact. It also implies that when a seemingly beneficial interest contradicts with Shari‘ah, the solution is not to override the Shari‘ah, but to find a sweet spot at the intersection that accommodate both worlds.

Figure 1: Identifying the Sweet Spot in SDM

Identifying the Sweet Spot in Shariah Decision Making



Source: (Agha, 2021)

4. The Concession Is Time and Need Bound

The concession provided due to a hardship in case of a private need is neither a total exemption nor perpetual, rather it is time-bound and confined to the extent of the need (Al-Zuhaili, 1985). As per the maxim of *hājah*, الحاجة تقدر بقدرها “need is to be assessed and treated proportionately”, and إذا ضاق الأمر وإذا اتسع ضاق “when hardship causes constraint, (the law), becomes permissive, but as circumstances ease, (the law) becomes strict”. These two maxims constitute that *hājah* based ruling shall not be extended beyond its limit and a concession shall be measured according to the magnitude of the need. For this reason, AAOIFI Standard No. 29 8/4 states: “fatwa issuers shall not always pursue Sharī‘ah exemptions (*rukhas*) to make matters easier for institutions. A Sharī‘ah exemption should be sought only when it results from a thorough examination of the issue and appropriate reasoning”.

For example, when a conventional bank is being converted to an Islamic one, principally, the interest-bearing transactions shall also be ceased or disposed of immediately. However, a reasonable delay in clearing out the non-permissible transactions may be justified on the ground of *hājah* as per the AAOIFI Sharī‘ah Standard No. 6, clause 2/1 as it states: “unless such delay becomes a necessity or a pressing need. Thus, the circumstances surrounding the conversion must be taken into the consideration to avoid the risk of failure or a breakdown of the bank’s operations”.

Similarly, the newly converted bank shall also terminate its all interest-based relationships with conventional banks. Nevertheless, it may deal with them provided that the relationship is “limited to the magnitude of the need to do so” as per the AAOIFI Sharī‘ah Standard No. 6, clause 3/6. This restriction can also be seen regarding reinsurance with conventional reinsurance companies: “Islamic insurance companies should stick to the minimum size of reinsurance with traditional reinsurance companies, and Sharī‘ah Board should undertake to follow up in this connection” (Standard No. 41, 6/5).

The confinement of concession to the actuality of the need implies that the beneficiary of the concession shall not capitalize it for purposes other than the initial need. For this reason, regarding *tawarruq*, AAOIFI Standard No. 30, 5/1, categorically stated: “the institutions shall not use monetization as a means of mobilizing liquidity for their operations”.

To implement this control in a private-need case, the Sharī‘ah decision-makers should first, inquire the beneficiary (management or customer) to clearly describe the exact magnitude of the need so that the Sharī‘ah concession would be commensurate with the actual extent of the need. Second, the Sharī‘ah resolution should highlight a reasonable timeline for the effectiveness of the concession and a threshold for the total volume of the

need-based transactions. So, when circumstances change and the justification remains no more valid, the product structured on the basis of *hājah* shall be returned to the original ruling. It is also a responsibility of the Shari‘ah control and audit functions to monitor the given timeline, validity of the *hājah* justification, and the threshold limit approved by the Shari‘ah board.

CONCLUSION

The doctrine of *hājah* as a juristic device may constitute a justification for concessionary ruling in Shari‘ah decision making in Islamic finance to navigate through challenges when the original law results in an unusual hardship. However, it shall not be taken as a free license for achieving arbitrary desires and self-seeking interests under the banner of need. The *hājah* must, therefore, be governed by the controls described in the above parameters to ensure that only genuine social, individual, and institutional needs which are in harmony with the Shari‘ah will qualify for relaxation in the formal application of the law.

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Penafian

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