



Maqasid Shari'ah's View and its Solution on Foreign Debt in Indonesia

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Abstract: This study entitled Maqasid Shari'ah's View and Its Solution on Foreign Debt in Indonesia, aims to know the concept of debt from Islamic perspective and to analyze current issues foreign debt in Indonesia. Since economic crisis happened in European countries, Indonesia needs to be more careful in considering the impacts of the crisis. One of the causes was because of the high level of interest of the debts. It made most of crisis happened in many countries hard to pay back their debts. Therefore, it is needed to know how Islamic principles see the concept of debt and give the solution to the problem of debt by using Maqasid's approach. It can give comprehensive solution to the debt because it covers five dimensions: religion, self, intellect, family and wealth, which are very important in human life to attain the happiness and welfare on earth. The study will conclude with some suggestions for future research.

Keywords: *Debt, Maqosid Shariah*

Introduction

The problem of today's world has been focusing on the economic crisis experienced by the European countries and United States. The crisis emerged firstly in 2008, when the banking crisis reached a climax with the demise of Lehman Brothers and the subsequent support to the financial system and then it turned into a sovereign debt crisis in spring 2011 (Constancion, 2011). In fact, The European countries have been beset by two interrelated crises: (i) a banking crisis and (ii) a sovereign debt crisis (Blundell-Wignal and Slovik, 2010). It has been originated by Greece and Ireland that have faced very significant crisis and then has been followed by euro-area. According to Monallo (2003) et al., sovereign debt crises, unlike currency crisis, last long and show persistence. Once a country is in a crisis, it is not easy to get out of one, as these episodes often have long spells (Manasse, 2003). This problem of sovereign debt crises can affect developing countries.

Moreover, debt is one of the fiscal instruments that are carried out by government for the purpose of reconstruction and economic development. In imbalance budgeting, the debt is used to cover deficit fund for government expenditure, which can be generated through foreign loans or foreign direct investment (FDI) and issuance of obligation. Indeed, it is clear that public deficits exist because tax revenues are not sufficient to finance all desired expenditure. In the case of Indonesia is still using deficit budget for its fiscal policy. Though Indonesian ratio foreign debt to GDP from 2005 (46,5%) to 2011 (27,3%) is significantly decreasing (www.dmo.or.id), therefore the European crisis should be taken into consideration in order to prevent Indonesian economy. So it can be concluded that one of the cause of crisis is ratio of

foreign debt to GDP that is high. Hence, the problem of the debt is very important in the country whether it should be done or avoided.

Consequently, Islam as the way of life has guided and given the solution to human problem as well as the issue of debt. The concept of debt is clear and well discussed in the Islamic literatures. Objective of Shariah (*Maqshad*) is to give public interest (*maslahah*) to mankind and to create welfare among society. In Islam, the debt is considered as a means of mutual help between people in need of funds and people who have excess in funds. By these explanations, the study attempts to discuss on the debt from Islamic view that explores more in the approach of maqhasid Shari'ah (Shari'a's Objective) for giving solution of debt in the country especially in Indonesia.

Related Literature

External debt is one of the sources of financing capital formation in any economy. The external debt has become a major issue in all countries. In economic theory postulates that debt borrowing is to promote economic growth as solution, otherwise in some level can be a burden for the countries. As mentioned by Hameed (2008) et al, excessive debt affects a country's economic development in a number of ways; one of the causes is reduction in economy's efficiency (Hameed et.al. 2008). It is supported by Ayadi et al. (1999), external debt burden had dramatically limited developing countries' participation in the world economy and the attendant debt servicing obligations continue to manifest as an impediment to economic growth and development (Ayadi, 2999). Therefore, the debt seems to help economic problem of the country in short term, but it can be a burden especially in developing countries.

Islam as way of life has solution to the economic problem of country. According to Misanam (2000), improving the welfare of the community, including the provision of *public goods* can be obtained through fund of zakah. The zakah is not only limited in scale of object, but it can vary in modern world that can be significant contribution to the country (Misanam, 2000). It can be used as tool of wealth distribution among the society. Therefore, the spirit of giving is not like between a master and a slave as in the case of foreign debt but rather it is based on the *brotherhood* which is more concerned with the welfare of the people, not the welfare of the donor countries. Islam has declared that the value of success and prosperity are not always measured by the material but by balancing material and spiritual factors in the life. As mentioned by Chapra (1993) that satisfaction of the spiritual needs requires moral development and that satisfaction of the material needs requires the development of all human and material resources in a just manner in which the need of all human beings are adequate fulfilled (Chapra, 1993).

Maqhasid Shari'ah

Maqashid Shari' or *maqasid al-Shari'a* or *al-maqasid al-Sha'iyah* can be understood into two ways; by seeing its compound words (*Murakkab al-Idhafi*) and knowldege. *Murakkab al-Idhafi* contents of *maqasod* and *sharia* word. Etymologically, *al-maqasad* is rooted from *qashada-yaqshidu-maqshidan* which means a straight path (*thariqul Mustaqim*), middle (*wasth*) and justice (*'adl*). Hence, some verses of the Qur'an give some meaning of *maqashid Shari'ah*:

واقصد في مشيك¹ ومنهم مقتصد² وعلي الله قصد السبيل³

¹ Al-Qur'an, Surah Lukman: 19.

² Al Qur'an, Surah Fathir: 23.

³ Al Qur'an, Surah al-Nahl: 9.

In addition, some Hadists mention the meaning of *maqashid Shari'ah*:

القصد القصد تبلغوا⁴ : عليكم بالتوسط في الأمور في القول والفعل والقصد في الشيء: خلاف الإفراط⁵

Terminologically, *al-maqshad* is desired objective for achieving justice. Literary, Shari'ah means the path to the watering place, the clear path to be followed and the path which the believer has to tread in order to obtain guidance in this world and deliverance in the next (Kamali, 2008). Shari'ah refers to commands, prohibitions, guidance and principles that God has addressed to mankind pertaining to their conduct in this world and salvation in the next.⁶ By these explanations it can be defined that the meaning of *maqashid Shari'ah* is objectives and wisdoms that are stated by Shari' on His laws for the purpose of human public interest (Rahman, 2011). According Raysuni (1995), *maqashid shari'ah* refers to the desired objectives of the *shari'ah* in determining the law (*hukm*) aimed at protecting human *maslahah*.⁷

Consequently, from the side of knowledge, it can be traced in notions and thought of the earlier Muslim thinkers such as Imam al-Harmayn, Imam Ghazali, Imam Syatibi and Ibn 'Ashur. Imam al-Harmayn and Imam Ghazali have not provided a detailed definition of *maqashid shari'ah* because in their time the study of *maqashid Shari'ah* was still in the discussion of the *'ilm fiqh*, but it is firstly defined in the time of Ibn Ashur. Ibn Ashur defines *maqashid al'amm li al-Shari'ah* as the goals (*al-Ma'ani*) and wisdoms (*al-hikam*) are desired by God (Shari') in the whole of the law (constitution) or most of it, which is not devoted attention to only in the specific of Islamic laws.⁸ Indirectly, his definition has actually the same meaning what Imam Syatibi explains in his *kitab al-muwafaqat*: "Shari'ah acts are not a goal in itself, but there are problems (*umurun*) who intends it (Shari'ah) that is their goals (*ma'aniha*).⁹ It is clear that Imam Syatibi has not explained *maqashid Shari'ah* in the form of definitions, but his concept has the same essence with the definition of Ibn 'Ashur.

In addition, Al-Fasi (2001) defines *maqashid al'amm li al-Shari'a al-Islamiyyah* with prospering, maintenance of the rule of life, sustainability of better improvement in the earth by improving human condition and its implementation in it that has been charged him to be just (*'adl*) and *istiqomah* as well as improving reason, work and prospering the earth for his good life and public interest of all.¹⁰ He also defines *maqashid Shari'ah* as its goals and the hidden meanings which the Lawgiver has assigned to each of its rules.¹¹ Most Muslim thinkers define as promoting public interests (*jalb al-mashalih*) and preventing harms (*al-mafasid*). *Maslahah* is described as public interests, truth and goodness, while *mafsadah* is linked to hazard (*mudharat*), crime and guilt (Misri, 2005). It is further clarified by Imam al-Ghazali that *maqasid al-khamsah* for man is preserving his faith, self, intellect, posterity and wealth.

⁴ Bukhari, *Fahtul Baru li Ibn Hajar al-asyqalani*, Riyadh: Darussalam, 1997, 182.

⁵ Ibn al-Atsir, *al-Nihayah fi Gharib al-Hadits wal Atsar*, Beirut: Darul Ma'rifah, 2001, 458.

⁶ Ibid, 14.

⁷ Ahmad Raysuni, *Nadhoriyyat al-Maqashid 'inda Imam al-Syatibi*, Beyrut: IIIT, 1995, 7.

⁸ Ibid, 18

⁹ Ahmad Raysuni, *Nadhoriyyat al-Maqashid 'inda Imam al-Syatibi*, 62.

¹⁰ Muhammad Thahir al-Masawi, *Maqashid al-Syariah al-Islamiyyah: al-Syeck Muhammad Thahir Ibn 'Asyur*, Amman: Darul al-Nafais, 2001, 148

¹¹ Ahmad Raysuni, *Nadhoriyyat al-Maqashid 'inda Imam al-Syatibi*, 6.

Everything related to *maqasid al-khamsah* is considered as *maslahah*, while everything related to avoiding *maqasid al-khamsah* is considered as *mafsadah* (Al-Ghazali: 248, 1993). Furthermore, it is related to discussion of *dharuriyyah*, *hajjiyat* and *tahsiniyyah*. These categories will be explained in detail below:

Dharuriyat: are defined as those on which the lives of the people depend, and their neglect leads to total disruption and chaos (Kamali, 2008). So the people essentially depend, such as faith, life, intellect, posterity, and wealth. It is essential for the community both collectively and individually. The social order of the community will not function properly if there is any defect in these public interests (*mashalih*) (Al-Masawi, 2006). This is the responsible of people either individual or group to realize the essential interest to attain public interest (*maslahah*) in all aspects of human life.

Hajjiyat: according to Zahra (2005), is everything that Shari'ah rule does not intend to prevent *maqasid al-khamsah*, but intend to eliminate hardship (*masyaqa*). The people, who neglect this category, will lead to hardship but not to total disruption of normal life. An example is seen in the form of Islamic transactions, which are needed by human such as *muzara'ah*, *istisnah*, *salam* and *ijarah*.

Tahsiniyat: the embellishments refer to interest who realization leads to improvement and the attainment of that which is desirable such as cleanliness, avoiding extravagance and forecasting profit in business.

The Issues of Foreign Debt

Modern Concept of Debt

Government can finance its activities into four ways; by collecting tax, borrowing debt, creating money and operating enterprises. Theoretically, the debt becomes useful instrument for budget deficit to finance government economy. The problem of foreign debt as a source of development financing (*budget deficit*) has become a classic debate in both theoretical and practical. According to Rostow, position of external debt is considered as *the missing link* in the chain of economic development. Practically, the debt associates as a *vicious cycle* in development, particularly in developing countries. The fact is experienced a severe *debt crisis*, such as the 1930's, 1980's, 1980's, 1990's and 2012. Debt settlement is still a complex and complicated problems to be solved (Anto, 2001).

In conventional theories, there are at least two theories to explain the urgency of foreign debt to finance development. The first theory says that the foreign debt, as well as foreign investment, it is necessary to close the saving *gap* based on the Neo-Classical terms (Todaro, 1994). By then the foreign debt is considered to be needed because *domestic savings* are insufficient to finance the construction. Actually, to reduce the gap of saving can be carried put into two forms, namely debt creating flows (DCF) and non-debt creating flows (NDCF). DCF can be either bilateral or multilateral debt, meanwhile NDCF can be like equity investment and foreign direct investment (FDI), short term capital and long term capital. The second theory to explain the phenomenon of foreign debt from the balance of payments, where it is one of the capital *account* on the balance sheet, which serves the interests of the current account which is autonomous. So if the current account is deficit, it will be compensated with debt in the capital. In this context, foreign debt can serve as *gap filling*, which fill the gap caused by the current account deficit (Todaro, 1994).

Islamic Concept of Debt

The debt in Islam known as *Al-Dayn*. Linguistically in Arabic it means either taking or giving. *Al-Dayn* is also known as common right in debt of wealth (*dhimmah*) (Hammad, 2008).

According to Hanafiyyah, the thing that is be burden of wealth (*debt*) through exchange and loan. In addition, according to Syafi'iyah and Malikiyyah, the thing that is stated as guarantee of wealth that requires its existence because of certain causes. According to majority of jurist, *al-dayn* is an obligation for a certain period (Hassan, 1997). Moreover, giving the debt to help people is encouraged in Islam, but taking usury is not allowed. In Islamic transaction it is related to the term of *al-qard*, which means an obligation to return the same object either immediately or at a specified time. Besides *al-qard*, usury (*riba*) is also related to the concept of debt in the light of Islam.

Islam has explained very detail regarding the debt that is derived from Islamic sources. Giving the debt is encouraged to help people who are in need in good manner as mentioned in Surah al-Baqarah, 245: "*Who is that special one who shall loan to God a goodly loan for His cause, so that He may multiply it for him many times over*". By then, purpose of giving the debt is *maslahah* of the society in conformity with the rules of Allah (Shari'ah). Some rules of debt's matter can be mentioned in table 1:

Table 1: Shari'ah Rule of Debt

NO	EXPLANATION	Permissible	Prohibition
1.	Giving the debt	Without usury (Public interest)	Take a usury (public interest)
2.	Default of debt	Suspending a payment for those who are in difficulty	Taking interest due to late payment or delivery (<i>riba nasi'ah</i>)
3.	Settlement of Debt	It is encouraged immediately	Delay in payment

First explanation expresses the scheme of *qard al-hasan* that is encouraged and usury that is not allowed. *Qard al-hasan* was among the forms of financing encouraged by the Prophet for channeling savings into investment and productive activities. It is associated with the institution of zakah, shadaqah and waqf as mentioned in Surah al-Rum, 39. Secondly, for debtor who are in difficulty to pay the debt, for creditor can suspend the payment, not to increase the payment due to late of payment. Thirdly, it is encourage the debtor to settle the payment on time rather than to delay the payment especially for the rich man as mentioned by the Prophet "delay (in the payment of debt) on the part of rich man in injustice."¹²

The Condition of Indonesian Foreign Debt

The external debt refers to the portion of a country's debt that was borrowed from foreign lenders including commercial banks, governments or international financial institutions. Some studies on the impact of debt on economic development indicate different output of the study. Some people conclude that foreign debt precisely has led the economic slowdown especially for large debtor countries; otherwise some conclude that foreign debt is one of factors that significantly boost economic growth for the debtor countries (Todaro, 1994).

Indonesia had highly potential growth rate before the financial crisis in Southeast Asia, It is in line with the economic development strategy announced by the government at that time. Indonesia's trend of economic growth since the late 1970's is always in positive level with per capita income is relatively low. Therefore the economic growth target is not sufficiently to be financed with own capital, but must be supported with aid of foreign capital (Suryta, 2000).

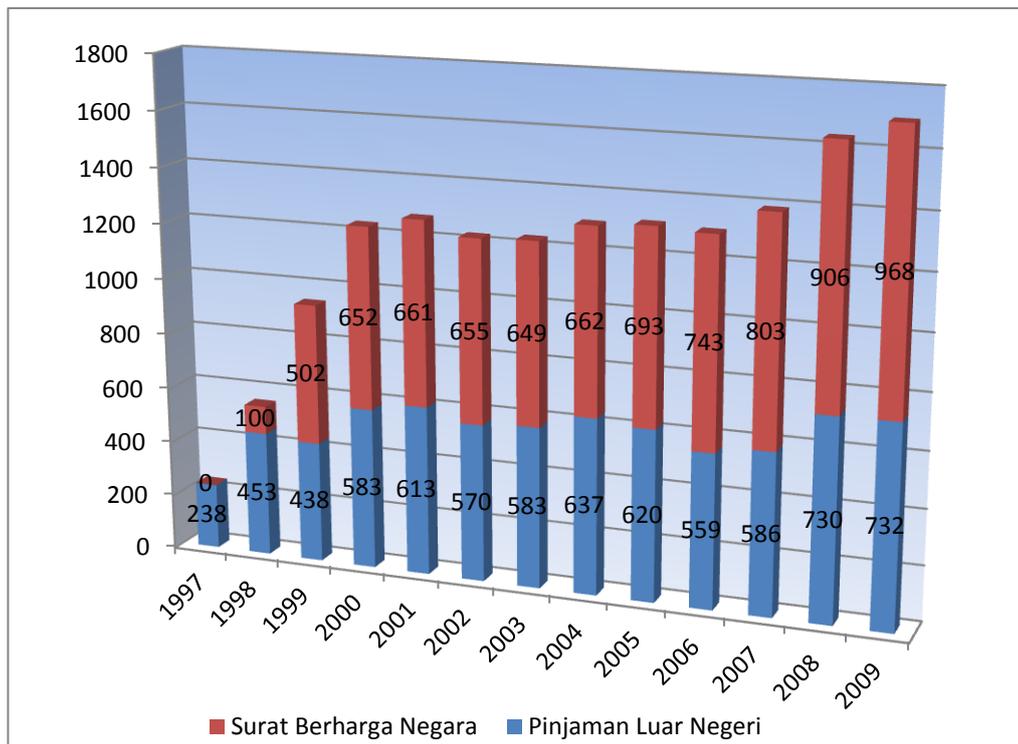
The World Bank has always praised the achievements of Indonesia's economic development. Even the position of Indonesia placed as one of successful developing countries in economic development, regardless the development process has damaged and broke the natural

¹² *Al-Muwatta*, Version of Yahya ibn Yahya al-Laythi, ed. Faruq Sa'd Beirut, 1983, 562.

resources, and wrapped Indonesia in a very large foreign debt rate (Hamid, 2000). Its total debt per December 1998 reached U.S. \$ 144, 021 billion rupiah, consisting of U.S. \$ 83 of private debt, 572 billion rupiah (58.03%). With a total population of 202 million, the debt burden per capita reached U.S. \$ 703 per year. It means every baby born in Indonesia has been already bear the burden of debt of U.S. \$ 303 or approximately Rp. 2,400,000.00 per year (Simatupang, 1999). Indonesia will be expected to pay off the debt after 50 years. Assuming the total external debt public and private Indonesia amounted to U.S. \$ 140 billion, to pay it off, the people of Indonesia must work 24 hours a day to pay Rp. 10000.00 for 50 years.¹³

Broadly speaking, the number of total *outstanding* government debt both foreign loans and domestic loans during the period 1999 - 2009 can be described as the following graph:

Figure.1: Total Debt Balance 1997 till 2009 the Government of Indonesia (in billion rupiah)¹⁴



The total amount of government debt will burden and increase the state budget because it resulted in a sharp increase in the repayment of debt principal and interest each year. Even the amounts of repayment of debt principal and interest have been greater than the number of additional new debt. In 2001, the number of additional new debt was only U.S. \$ 5,511 million, while the number of installment payments of debt principal and interest amounted to U.S. \$ 7,157 million, which means there is a negative difference of minus U.S. \$ 1,646 million. During the period 2001 to 2008 the difference is likely to increase each year until it reaches minus U.S. \$ 4,949 million, as shown in the table below:

¹³ Ibid, 180.

¹⁴ Source: Indonesian Debt Management Office, www.dmo.or.id, accessed on 15 October 2012.

Table 2: Difference in number of Additions New Debt with Debt Principal Payments and Interest Instalment (in million U.S. \$)¹⁵

Information	2001	2002	2003	2004	2005	2006	2007	2008
Addition of New Debt	5511	5646	5224	2602	5538	3661	4009	3892
Principal Installment Debt	4245	4567	4955	5222	5626	5787	6322	6569
Interest	2912	2782	2656	2495	1339	2280	2298	2272
Number	7157	7349	7611	7717	6965	8067	8620	8841
Difference	(1.646)	(1.703)	(2.387)	(5.115)	(1.427)	(4.406)	(4.611)	(4.949)

Based on the data above, it is no exaggeration to say that Indonesia has entered the *debt trap* which forces the government to make additional debt in order to pay for another debt each year (Misanam, 2000). However, the government (Ministry of Finance) said that Indonesia's foreign debt is still within safe limits (fair).

Maqashid Shari'ah's View and its Solution on Foreign Debt

Islam gives a framework for the individual pursuit of material wealth with the balancing activities from gaining its sources and the manner it is spent, as mentioned in Hadits: "On the Day of Resurrection, no human being will be released from God's presence (as judge) until he has been asked where he obtained his material wealth and how he put it to use."¹⁶ In an Islamic economy, the behavior of a Muslim in fulfilling his needs is set by God in the laws of Shari'ah.

Indeed, The Shari'ah has its objectives to achieve the justice and *maslahah* (public interest). Borrowing the debt in Islam is allowed when it is regarded as *maslahah* (public interest) not *mafsadah* (harmful). Therefore, *maslahah* should be maximized and *mafsadah* should be minimized to achieve justice and welfare. Moreover, the fulfillment of the purpose of Islamic law in order to achieve *maslahah* (public interest) through *maqashid shari'ah* must meet five level of maqashid shari'ah called as *maqashid al-kulliyah* or necessity, namely the preserving (*hifdzu*) faith, self (*nafs*), Intellect (*'aql*), offspring (*nasl*) and wealth (*mal*). These five necessities can be related to current problem of external debt, as follow.

Firstly, *hifdh al-din* (faith). Foreign debt has been classified based on interest/*usury* which is extremely forbidden in the case of Allah and is directly and clearly undermine *maqashid shari'ah* of preserving the faith, which is related to Islam. Prohibition of usury in Islam has several objectives in order to preserve the life of human such as promoting the justice, welfare and *maslahah* (public interest).

Secondly, *hifdh al-nafs* (self). Indonesian foreign debt is increased every year, if it is not accompanied by the increase of productivity in the real sector, it can be said that the debt will eventually be borne by the society, one of them through tax collection. While the tax is considered one of burdens of inhibiting the formation of profit-maximization because it can increase the *average total cost*. If the taxes charged to those who are less fortunate, then it is destroying the purpose of *maqashid shari'ah* in preserving the life of human that affect to unemployment, inflation and poverty.

Thirdly, *hifdh al-'aql* (intellectual). The impact of external or foreign debt is dependency economic in the country, which is mostly associated to developing countries. This dependency shapes the character of human that makes them lazy to think, innovate and develop the country,

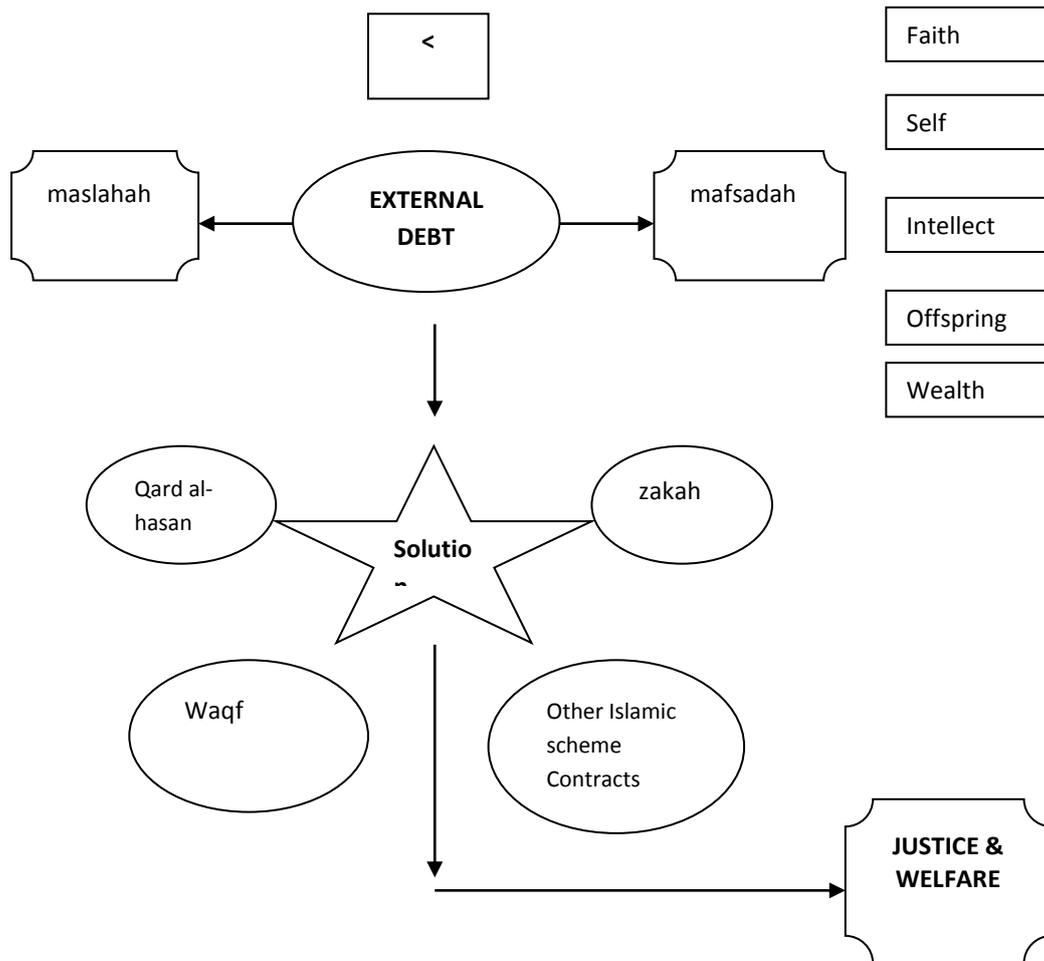
¹⁵ Source: Indonesian Debt Management Offi Center.

¹⁶ Abu Isa Muhammad ibn Isa In Surah al-Tirmidhi, *Al-Jami' al-Shahih Sunan al-Tirmidhi*, 5 parts, ed. Ahmad Shakir, Beirut: Darul Kutub), n.d, 4:614

so it impact to lack of skill and expertise. So, Muslim countries always became consumptive rather than productive countries. In fact, Islam teaches all Muslim to read, think and innovate in order to reach their *falah* (the success in here and the hereafter).

Fourthly, *hifdh an-nashl* (offspring). No doubt that foreign debt is something that will be passed down to the next generation. So it is possible the same thing will be done to the next generation. Because they should not be given the burden they bear, it is already included in injustice. It is then damaging the purpose of *maqashid shari'ah* in preserving the future generations.

Figure 2: Maqashid Shariah and its Solution on Foreign Debt



Fifthly, *hifdzu al-mal* (Wealth). The debt on interest (*riba*) which is not allowed in Islam will damage the preservation of wealth. The debt cannot give solution to preserve the wealth of Nation, but it affects to crisis as mentioned in previous explanation. One of the solutions to preserve the wealth is through *qard al-hasan*, *zakah*, *shadaqah* and *waqf*. These instruments can contribute to economic growth if it is used significantly in Muslim countries. The objective of these instruments is to alleviate inequality of income among society. These five necessities give the framework to solve economic problem without the debt, because the *mafsadah* is greater than its *masalah*. The solution is through *qard al-hasan*, *zakah*, *shadaqah* and *waqf* as the tools of allocating and distributing income between rich men and needy men. To Ahmed (2004), *zakah* and *waqf* can contribute in macro and micro context. For example in macro level they can

provide education, health facilities, and social service to improve welfare of the society.¹⁷ Empirically, the study of zakah on poverty alleviation mentioned by Patmawati (2007)¹⁸ in Selangor, Malaysia; M.Kabir & Juanyed (2007)¹⁹ and Ahmed(2004) in Bangladesh and Irfan (2009)²⁰ in Indonesia agreed that zakat distribution reduces poverty incidence, reduces the extent of poverty and lessens the severity of poverty. So, the zakah can help the needy countries not by the external debt. By then the *maslahat al-dunya* and *maslahah al-akhirah* can be achieved in the Muslim countries.

Conclusion and Recommendation

The foreign debt is still based on interest deemed unfit by the majority of Muslim countries that are categorized as third developing countries. Though Indonesia is major population Muslim, but its nation's ideology is based on Islamic principles, therefore it is difficult to avoid the foreign debt without interest. In fact, Indonesia should learn from long experiences of debt problem in many countries, where is now faced by the European countries and United State. In addition, Indonesia should realize that the repayment of debt principal and interest is increasing sharply every year that will become a major problem later on. However, the economic problem can be solved by other solutions rather than still implementing the debt as the patron to stimulate the economic growth. There many studies mention that the foreign debt is only giving temporary hope in short term, but causing many problems to the country.

Based on islamic's view of foreign debt, if it is based on interest (*riba*) which is something forbidden and could undermine the purpose of *maqashid al-khamsah*. It makes what most people think about the foreign debt can bring welfare must be re-questioned. In principle, the debt is allowed in Islam by certain circumstances and requirement derived from Shari'ah. In the case of foreign debt, then it is a burden that must be paid by the government (state). Essentially, Islam has given a solution to all the problems that exist, particularly in the economic field with the prohibition of usury. Now it is just a matter of incompetence or factors that the government has not dared to adopt a whole Islamic economic system such as using *qard al-hasan*, *zakah*, *waqf* and other Islamic scheme to solve the economic problems. It is hoped the government would be wise to again and again bolder decisions and be able to distinguish the things that are considered to be good for achieving welfare for society. It is the role of the younger generation to continue to fight to uphold the Islamic economic system in this country.

¹⁷ Habib Ahmed, *Role of Zakah and Awqaf in Poverty Alleviation*, IRTI: Jeddah, 2004, 64.

¹⁸ Patmawati Hj.Ibrahim, *Peranan Agihan Zakat Dalam Meningkatkan Tahap Ekonomi Ummah*. Paper presented in International Convention on Zakah PWTC, Kuala Lumpur. 22-24 Mei, 2007.

¹⁹ M.Kabir Hassan & Juanyed Masrur Khan.(2007). Zakat, External Debt & Poverty Reduction Strategy in Bangladesh. *Journal of Economic Cooperation*, 28(4):1-38.

²⁰ Irfan Syauqi Beik.(2009). Analysis on the Role of Zakat in Alleviating Poverty: Dompot Dhuafa Republika Case Study. *Zakat & Empowering, Jurnal of Thoughts and Ideas*, 2, May, 41-48.

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