

Theme: *FIQH BANK SYARIAH: A Critical Study on DSN-MUI Fatwa as a Solution to the Problems of Islamic Banking Practices in Indonesia*

FIQH BANK SYARIAH: A Critical Study on DSN-MUI Fatwa as a Solution to the Problems of Islamic Banking Practices in Indonesia

T. Riza Zarzani^{1*}, Kasim².

^{1,2}*Universitas Pembangunan Panca Budi, Indonesia*

*e-mail: rizarzani@dosen.pancabudi.ac.id

ABSTRACT

This research is a qualitative research in the form of library research, religion as a symptom of culture with historical and *usul al-fiqh* (principles of Islamic jurisprudence) approaches, with descriptive analytic research. The Purpose of this research is to find out (1) The position of fatwa within Islamic *istinbat* law, (2) The contribution of the Indonesian Ulema Council (MUI) upon the development of Islamic Bank in Indonesia, (3) Actualization of DSN-MUI fatwa as problematic solution in the practice of Islamic bank in Indonesia. The conclusion of this research are; (1) Fatwa is a part of *ijtihad*, yet more specific than *ijtihad*. Since it was given when there is question or problem given at the moment. By that, the position of fatwa within *istinbat* in Islamic law holds a strategic role in responding and answering every contemporary *fiqh* question arised. (2) The Indonesian Ulema Council (MUI) initiates Islamic Bank through discussions, seminars and symposium since 1990, in 1992 *Muamalah* Bank was born as the first Islamic Bank in Indonesia and followed by other Islamic banks. Furthermore, to guarantee the practice of Islamic Bank according to *syaria* principle, MUI creates *Dewan Syariah Nasional* (DSN; National Syariah Council), a fatwa council which specified to give fatwa toward islamic economy. MUI has given huge contribution toward the establishment of Islamic Bank in Indonesia. (3) DSN-MUI fatwa in islamic banking has already transformed into the Law no. 21 2008 about Islamic Banking and Indonesian Bank Regulation (PBI). The transformation made DSN-MUI has strong law power, however there are practices of Islamic bank that contradict toward the fatwa of DSN-MUI, whereas Bank of Indonesia (BI) and *Syaria* Investigator Council (DPS) supervised them. The fatwa of DSN-MUI has not become the problem solution toward the practice of Islamic Banking in Indonesia. Hence, further solution should be given so that society will have faith toward the practice of Islamic banking to avoid usury in islamic banking.

Keywords: *Fatwa, Contribution, Actualization, DSN-MUI, Islamic Bank*

1. Introduction

The interplay and correlation between societal change and legal development are integral. The law must guide the acceleration of societal development, as it serves as a tool for social engineering. Conversely, societal development also impacts legal evolution. The law needs to be dynamic, not static, to accommodate societal needs. It should be forward-looking rather than backward-looking. The law should be a driving force to improve societal life and be beneficial for all, not regress it. Contemporary problems faced by modern societies, such as issues surrounding *Sharia* banking and the controversies over *riba* (interest), are examples of challenges that may not have existed in previous

Theme: FIQH BANK SYARIAH: A Critical Study on DSN-
MUI Fatwa as a Solution to the Problems of Islamic Banking
Practices in Indonesia

eras. Therefore, due to the increasingly complex dynamics of legal issues, the reform of Islamic law is seen as an inevitability to achieve the welfare of the Muslim community (Abdul Manan).

The rapid advancement of the world, marked by globalization and the swift progress of science and technology across various aspects of societal life, has a significant influence, including on Islamic legal matters. As an inseparable part of the global community, Indonesian Muslims cannot detach themselves from global issues, including economic ones. In the economic sphere, there has long been a desire to implement an economic system based on Sharia values and principles applicable in all aspects of business life and transactions. This desire stems from a consciousness to implement Islam in a comprehensive and total (kaffah) manner, as expressed in Surah al-Baqarah [2]: 208:

يَا أَيُّهَا الَّذِينَ آمَنُوا ادْخُلُوا فِي السِّلْمِ كَآفَّةً وَلَا تَتَّبِعُوا خُطُوَاتِ الشَّيْطَانِ إِنَّهُ لَكُمْ عَدُوٌّ مُّبِينٌ

O you who believe, enter into Islam completely (into peace) and do not follow the footsteps of Satan. Indeed, he is to you a clear enemy.. (Q. S. Al Baqarah : 208)

In addition, during the period between 1997-1998, an economic crisis struck Indonesia and Asia, specifically, and a global recession and economic imbalance more generally. This crisis was seen as evidence of flaws in the conventional economic system that had been adopted until then. The situation was exacerbated by the closure of 63 banks due to bankruptcy, the takeover of 14 banks, and the need for recapitalization of 9 other banks at the cost of hundreds of trillion rupiah (Muhammad Syafi'i Antonio). Therefore, it was deemed time for Muslim bankers in particular to introduce Sharia principles in economic activities, especially banking transactions. The time had come to apply Sharia mu'amalah with its main philosophy of partnership and sharing (sharing) in profit (profit) and risk (risk) to realize more transparent and fair economic activities. It was also time to prove that the Sharia banking system could eliminate the plague of negative spread (value difference) from the banking world (Syafi'i Antonio).

Many goals and benefits were sought through the establishment of Sharia banking, primarily to build the economy of the ummah. Based on the practice of the Quran and Sunnah, the main goals to be achieved are generally divided into two: (1) avoiding the practice of riba and (2) applying Sharia principles in banking for the purpose of benefit. Seeing the strong community drive for the establishment of Sharia banks in Indonesia, the Indonesian Ulema Council (MUI) responded positively and proactively by holding the Bank Interest and Banking Workshop on 18-20 August 1990 in Cisarua Bogor, West Java. The results of the workshop were discussed at the IV MUI National Conference at the Sahid Jaya Hotel, Jakarta, on 22-25 August 1990. Based on the mandate of the IV MUI National Conference, a working group was formed to establish an Islamic bank in Indonesia, and in 1992, Bank Muamalat Indonesia (BMI) was established as the first bank in Indonesia to base its transactions on Sharia principles.

In general, Sharia banking products are of three types: (1) fund collection, (2) fund distribution, and (3) service products. Sharia banking products in the field of fund collection include current accounts, savings, and deposits. Sharia banking products in fund distribution include eight types: (1) financing based on mudarabah contract, (2) financing based on musyarakah contract, (3) financing based on murabahah contract, (4) financing based on salam contract, (5) financing based on istisna' contract, (6) financing based on ijara contract, (7) financing based on qard contract, and (8) multijasa financing. While Sharia banking service products include Wakalah, Kafalah, Safe Deposit Box, Rahn, Gold Rahn, al-Sarf, Debt Transfer, Sharia Import Letter of Credit, Sharia Export Letter of Credit,

Theme: *FIQH BANK SYARIAH: A Critical Study on DSN-MUI Fatwa as a Solution to the Problems of Islamic Banking Practices in Indonesia*

Bank Indonesia Wadiah Certificate, Interbank Mudarabah Investment Certificate (IMA), Sharia Charge Card, Line Facility (at-Tashilat), and al-Qardh.

To respond to the development of Sharia financial institutions, especially Sharia banking in Indonesia, the MUI formed the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) on 10 February 1999 in accordance with the Decree of the Indonesian Ulema Council No. Kep-754/MUI/II/1999. DSN-MUI consists of Islamic law experts (fuqaha) and experts and practitioners in economics, especially in the financial sector, both banks and non-banks. The presence of scholars in the management structure is a unique feature of Sharia banking. Scholars competent in Sharia law and banking applications play a significant role in setting and supervising the implementation of Sharia principles in Sharia banking.

DSN-MUI is the only institution that has the authority to issue fatwas on the types of activities, products, or Sharia financial services in Indonesia and to supervise the implementation of these fatwas by Sharia financial institutions in Indonesia. Since its establishment on 10 February 1999 until 2008, DSN-MUI has issued a total of 75 fatwas that provide a Sharia basis for Sharia Financial Institutions.

In summary, the importance of DSN-MUI fatwas for Sharia banking in conducting its business activities is clearly evident. DSN-MUI fatwas play an important role in developing Sharia banking legal products. This means that the position of DSN-MUI fatwas is strategic for the advancement of the economy and Sharia banking in Indonesia.

Therefore, in the author's opinion, the fatwas of the DSN-MUI are intriguing to study for the following reasons:

1. At the theoretical level, this council delves into, researches, examines, discusses, and decides on urgent issues that require legal certainty in the practice of Sharia banking.
2. At the practical level, DSN-MUI fatwas serve as the foundation of Islamic law in the practice of Sharia banking and Sharia economics in general, both by practitioners of Sharia Financial Institutions (LKS) and the Indonesian public, especially Muslims.

Generally, fatwas are non-binding, as are the fatwas previously issued by the MUI. However, in the context of Sharia finance, especially Sharia banking, DSN-MUI fatwas are used as the Sharia legal basis for Sharia banking products. This raises questions about the strength of DSN-MUI fatwas as a Sharia foundation in Sharia banking practices and the extent of DSN-MUI's response to the emergence of Sharia banking products.

Based on the above description, the author aims to conduct research and provide analysis to critique the DSN-MUI fatwas, starting from a reflection on the Sharia foundations they use, the methods applied in issuing their fatwas, and their solutions to the problems of fiqh mu'amalah practices in Sharia banking in Indonesia.

2. Methods

From a methodological perspective, qualitative research is divided into two categories. First is library research, and second is field research. Library research relies almost entirely on data from libraries, making this approach more popularly known as descriptive qualitative library research or bibliographic research. It is also sometimes termed non-reactive research, as it fully depends on theoretical data and documentation available in libraries. Meanwhile, field research relies on data

Theme: FIQH BANK SYARIAH: A Critical Study on DSN-
MUI Fatwa as a Solution to the Problems of Islamic Banking
Practices in Indonesia

obtained from the social setting through informants and documentary data related to the research subject (*emik*). This study employs a normative approach, addressing issues from a normative perspective to determine whether something is good or bad, right or wrong. In this research, a normative approach will be applied to the fatwas of the DSN-MUI on Sharia banking products from 2000-2008, focusing on the *ijtihad* methods used in the establishment of Islamic law, such as *qiyās*, *istihsān*, or *maslahah mursalah*, as well as based on the objectives of *maqāsid al-sharī'ah*.

3. Results and Discussion

Term fatwa (الفتوى) adalah istilah yang sudah populer dalam kajian usul fiqh dan fiqh, fatwa berasal dari bahasa Arab dari akar kata “*fata*” yang berarti masa muda, Kata al-fatwa secara *lughawi* adalah *isim masdar* yang berasal dari kata “*afta*” jamaknya “*fatawa*” dengan mem-*fatah*-kan huruf “*waw*” atau mengkasrahkan huruf “*waw*” dibaca “*fatawi*” merupakan bentuk kata benda dari kalimat “*fata- yaftu-fatawa*” (فتا - فتفو - فتوا) artinya “ seseorang yang dermawan dan pemurah” (والكعج غلبه) (في الفتوة اي السخاء). Orang yang berfatwa disebut dengan mufti. Bila dikaitkan definisi *lughawi* di atas dengan mufti erat sekali kecenderungannya, karena seorang mufti untuk selalu pemurah dalam memberikan ilmunya kepada setiap yang meminta fatwa. Menurut al-Fayumi, (الفتوى) berasal dari kata “*al- fata*” (الفتى) artinya “pemuda yang kuat”. Arti ini memberikan pengertian bahwa seorang mufti harus kuat memberikan argumentasi dari orang yang meminta fatwa.

As we know, there are several legal evidences in the Quran and Hadith which are still general in nature. According to scholars such as al-Zarkashi (d. 794 H), there are about 500 verses related to law in the Quran. Al-Suyuthi wrote about 200 verses, while Abdul Wahab Khallaf mentions about 500 verses, detailing: First, laws related to family matters (al-ahwal al-syakhshiyah) comprise about 70 verses. Second, civil law (ahkam madaniyah) comprises 70 verses. Third, criminal law (ahkam al-jinayah) comprises 30 verses. Fourth, procedural law (ahkam al- Munafaat) comprises 13 verses. Fifth, judiciary law (ahkam al- dusturiyah) comprises 10 verses. Sixth, state law (ahkam al- Dauliyah) comprises 25 verses. Seventh, economic law (ahkam al-Iqtisadiyah) comprises 10 verses. Similarly, Hadiths related to law are also relatively few, with some saying about 3000 Hadiths, some 2000, and some scholars say about 5000 Hadiths.

The relatively small number of legal verses and Hadiths opens the door for *ijtihad*. One product of *ijtihad* development is fatwa. *Ijtihad* can be done in the form of issuing fatwas as concrete results of *ijtihad*. Yusuf Qaradawi states that *ijtihad* in the form of fatwa is a broad field that takes various forms, both institutionally and personally. Institutionally, it can be seen from Darul Ifta' in Egypt, Lajnah Fatwa in Al-Azhar, Riasyah Ifta' in Saudi Arabia, and others. The fatwas from these institutions are then published in books to be disseminated to the Muslim community.

The author analyzes some important points in the DSN-MUI fatwa as a real illustration of how this fatwa practice is implemented in Sharia banking in Indonesia. First, point 3 states that "the bank finances part or all of the agreed-upon purchase price of goods." In this DSN-MUI fatwa, the word "financing" is used, leading DSN-MUI to consider murabahah as financing, not a sale, deviating from the actual meaning of murabahah itself.

In Sharia banking applications, they include murabahah sale-purchase contracts in financing products, as Sharia bank products fall into two categories: fund distribution and financing, with no sale-purchase products. Furthermore, the DSN-MUI fatwa mentions "financing part or all of it," which contradicts the essence of murabahah, as the bank should buy the goods from the supplier in full, making the goods entirely bank-owned, before selling them to the customer as the buyer. If the

bank only buys part of it, it implies that the goods are not entirely owned by the bank. And if not fully owned by the bank, it should not sell the entire goods. Therefore, the term "part" implies the rest is financed by the customer.

It needs to be clarified whether murabahah here is a sale-purchase transaction or financing, as there is a difference between the two. If it's a sale-purchase, then all sale-purchase conditions should apply in this murabahah contract, for example, not being allowed to sell something that is not yet owned or in possession. In the case above, the bank no longer acts as a seller but as a lender or creditor to the customer. Since the bank does not fully own the goods, as it only pays part of the goods' price, this becomes a debt plus margin rather than a sale plus margin. However, if this is a debt, the bank should not profit from the goods sold to the customer, as a debt should be repaid with the same amount of money. If done, it would be considered *riba*. If this is the case, then such a fatwa should not exist, as it deviates from the true meaning of murabahah.

Second, point 4 of the fatwa states, "the bank buys goods needed by the customer in the bank's own name, and this purchase must be lawful and free of *riba*." This fatwa clearly requires that the bank purchase goods needed by the customer in the bank's own name. In practice, Sharia banks only conduct murabahah contracts when the customer has already made a purchase and paid a portion of the goods' value. As we know, banks in Indonesia, whether Sharia or otherwise, only act as intermediaries, meaning their role is in financing, not in buying and then reselling goods. Given regulatory and factual constraints, banks are not permitted to engage in direct trading activities. Thus, it is impossible for the bank to buy goods in the bank's own name as required by the DSN-MUI fatwa.

Third, point 5 mentions, "the bank must disclose all matters related to the purchase, for example, if the purchase is made on credit." All details related to the purchase must be explained to the customer, such as if the purchase is made on credit, which usually implies a higher price. However, in reality, no bank purchases goods on credit, as banks are financial institutions and typically make cash purchases. Additionally, banks must disclose if there are discounts involved in the purchase, as the discount benefits the customer, not the bank, and the base price should be the price after the discount, not before.

Fourth, point 6 of the fatwa states, "the bank then sells the goods to the customer (orderer) at a selling price equal to the purchase price plus profit. In this regard, the bank must honestly inform the customer of the base price of the goods and any associated costs." Murabahah sale contracts require high integrity, as dishonesty can have serious consequences, especially regarding the base price of the goods. If the bank is dishonest in stating the base price, quoting a higher price than the actual cost, the customer has the right to choose whether to continue or cancel the contract. For example, if the actual price of the goods is 200 million rupiah and the bank quotes 250 million rupiah, the customer has the right to return the goods and cancel the contract, though the contract remains valid if continued, but the customer has the right to choose.

Fifth, point 7 mentions, "the customer pays the agreed-upon price for the goods within an agreed-upon time frame." The correct wording should be "paying the price of the goods plus the agreed-upon margin (profit)" because the difference in murabahah sales compared to other sales is that murabahah mentions the price of the goods (purchase price) plus the agreed-upon margin, while in regular sales, the selling price is directly stated without mentioning the margin earned by the bank. The fatwa also states "within an agreed-upon time frame." This implies that the murabahah sale referred to in the DSN-MUI fatwa is conducted on credit, whereas in Islamic jurisprudence, the settlement of murabahah sales can be done in three ways: immediate cash payment (*naqdan*), deferred

payment (mu'ajjal), or in installments (taqsit). This differs from what is explained in Islamic jurisprudence.

In Sharia banking practice, murabahah repayments are made in installments (taqsit), and no Sharia bank settles murabahah with immediate cash or deferred payment. When determining the margin, Sharia banks also consider the repayment period; the longer the period, the higher the margin taken by the bank. Therefore, it's not incorrect to say that murabahah sales in Sharia banks are similar to credit in conventional banks, as banks charge high profits not only for the sale margin but also as a substitute for time during repayment. This practice is referred to as *riba jahiliah*.

4. Conclusion

The discussion titled "Fiqh of Sharia Banking: A Critical Analysis of the DSN-MUI Fatwa as a Solution to the Problems of Sharia Banking Practice in Indonesia," as explained in the previous chapters, has generated many thoughts and blended into a new concept. Thus, this dissertation reaches conclusions based on the formulated problems and their respective discussions as follows:

- 1) A fatwa is a part of *ijtihad* but is more specific than general *ijtihad*, as it is issued in response to a particular question or real-life incident. Therefore, the role of fatwa in deriving Islamic law is highly strategic because it responds to and addresses each emerging contemporary fiqh issue.
- 2) The Indonesian Ulema Council (MUI) pioneered the establishment of Sharia banks through studies, seminars, and symposiums since 1990, leading to the establishment of Bank Muamalat in 1992 as the first Sharia bank in Indonesia. This was followed by other Sharia banks, both purely Sharia and conventional banks with Sharia units. To ensure Sharia banking practices adhere to Sharia principles, MUI established the National Sharia Council (DSN), a specialized fatwa body for Islamic economics. Consequently, MUI has significantly contributed to the growth and development of Sharia banking in Indonesia.
- 3) Fatwas of the DSN-MUI in Sharia banking have been transformed into Law Number 21 of 2008 on Sharia Banking and Bank Indonesia Regulations (PBI). This transformation endows the DSN-MUI fatwas with strong legal force and binding power. However, there are still instances where Sharia banking practices do not align with DSN-MUI fatwas due to various field constraints, despite supervision by Bank Indonesia (BI) and the Sharia Supervisory Board (DPS). Therefore, these fatwas have not yet become a complete solution to the problems of Sharia banking practices in Indonesia. Efforts must continue to enhance public confidence in Sharia banking practices to avoid *ribawi* practices prohibited by Islam.

5. References

- Abduh, M. Z. "Bank Customer Classification in Indonesia: Logistic Regression Vis-a-vis Artificial Neural Networks." *World Applied Sciences Journal*. Vol. 18 No. 7 (2012). 933-938.
- Abdullah Abdul Ghani dan Ismail Hasani. *Diktat mata kuliah Ilmu Perundang-undangan, Fakultas Syari'ah dan Hukum*. Jakarta: UIN Syarif Hidayatullah, 2007.
- Abdurrahman, Asjmun. *Manhaj Tarjih Muhammadiyah Metode dan Aplikasi*. Yogyakarta: Pustaka Pelajar, 1995.

Theme: *FIQH BANK SYARIAH: A Critical Study on DSN-MUI Fatwa as a Solution to the Problems of Islamic Banking Practices in Indonesia*

- Afrida, Yenti. "Analisis Pembiayaan Murabahah di Perbankan Syariah," *JEBI: Jurnal Ekonomi dan Bisnis Islam*, Volume 1, Nomor 2 (2016), 155-166.
- Ahmad, Noor dkk. *Epistimologi Syara': Mencari Format Baru Fiqh Indonesia*. Yogyakarta: Pustaka Pelajar, 2000.
- Ahmed, H. "Islamic Banking and Shari'ah Compliance: A Product Development Perspective." *Journal of Islamic Finance*. Vol. 3 No. 2 (2014). 15-29.
- Asfahani (al), Raghīb. *Mu'jam Mufradat al-Faz Al-quran*. Beirut: Dar al- Fikr, 1992.
- Ali, Muchtar. *Disertasi Prospek Fatwa Sebagai Hukum Positif Indonesia Suatu Tinjauan Historis dan Yuridis*. Jakarta: tp, 2009.
- Ali, Mukti. *Ijtihad dalam Pandangan Muhammad Abduh, Ahmad Dakhlan dan Muhammad Iqbal*. Jakarta: Bulan Bintang, 1990.
- Ambari. *Fatwa DSN MUI Sebagai Hukum Materiil Peradilan Agama (Suatu Tinjauan Yuridis di Indonesia)*. Tesis pada Magister Studi Islam (MSI) UII Yogyakarta Konsentrasi Hukum Bisnis Syari'ah (2007), Tesis tidak diterbitkan.
- Baloch, N.A. *Advent of Islam in Indonesia*. Islamabad: National Institute of Historical and Cultural Research, 1980.
- Bambang Isnianto, *Fatwa-Fatwa Ekonomi DSN MUI (Studi Terhadap Fatwa DSN No. 28/DSN-MUI/III/2002 Tentang Jual Beli Mata Uang)*, (Skripsi pada Fakultas Syari'ah Jurusan Mu'amalat, UIN Sunan Kalijaga, 2008). Skripsi tidak diterbitkan.
- Departemen Agama RI. *Petunjuk Teknis Pedoman Sistem Produksi Halal*. Jakarta: Dirjen BIMAS Islam dan Penyelenggara Haji Departemen Agama RI, 2003.
- Departemen Agama RI. *Undang-Undang Republik Indonesia Nomor 21 Tahun 2008 Tentang Perbankan Syariah*. Jakarta: Direktorat Jenderal Bimbingan Masyarakat Islam dan Direktorat Urusan Agama Islam dan Pembinaan Syariah, 2008.
- Ganesan, Shankar. "Determinants of Long-term Orientation in Buyer-Seller Relationship.," *Journal of Marketing*. No.58 (April, 1994). 1-19.
- Gayo, Ahyar Ari dan Ade Irawan Taufik. "Kedudukan Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia dalam Mendorong Perkembangan Bisnis Perbankan Syariah (Perspektif Hukum Perbankan Syariah)," *RECHTSVINDING: Jurnal Media Pembinaan Hukum Nasional*, Volume 1, Nomor 2 (Agustus 2012), 257-275.
- Hidayat, Racmat Taufik dkk. *Almanak Alam Islami*. Jakarta: Pustaka Jaya, 2000.
- Hidayati, Maslihati Nur. "Dewan Pengawas Syariah dalam Sistem Hukum Perbankan: Studi Tentang Pengawasan Bank Berlandaskan pada Prinsip- prinsip Islam." *Lex Jurnalica*. Vol. 6 No.1 (Desember 2008). 62-76.