

Fatwa on Sharia Products and Its Role in The Development of Islamic Finance Industry

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Abstract

The development of the Islamic finance industry in Indonesia has increased rapidly and satisfactorily. This can be seen from the growing number of Islamic financial institutions with a total of 4,000 institutions in 2019. These thousands of institutions offer sharia services and products; Islamic banks, Islamic people's credit, sharia insurance, sharia pension funds, sharia pawnshops, sharia cooperatives, and sharia financial technology (fintech), etc. The rapid development of the Islamic financial market is a serious challenge for sharia economic experts who are members of the official institution of the National Sharia Council. This institution has the sole authority in issuing fatwas on sharia economics and finance in Indonesia. This paper reviews the thought products of the National Sharia Council in issuing fatwas in the form of sharia financial products that are flexible, meeting market demands/customer needs, and complying with sharia principles. The data was collected from DSN's fatwas on sharia products from 1999-2010. Furthermore, the content analysis method was used to analyze the contents of DSN's fatwa. The analysis result shows that DSN's ijtihad in producing sharia products has not been sufficient a priori to rely on classical books which are very normative but must rely on economic demands/needs of modern financial markets.

Keywords: Fatwa; Ijtihad; Islamic Industry; Products; Development

Introduction

The development of Islamic finance and business in the last decade have indeed shown a strong acceptance not only in Muslim countries but also non-Muslim countries. According to New Horizon: Global Perspective on Islamic Banking and Insurance in 2018, approximately 87 countries on all continents have taken advantage of the shariah financial system. The shariah financial system is not intended for Muslims, but all people. The values contained therein, such as justice, transparency, economic equality, and poverty alleviation are universal and generally apply regardless of the ideological background of a country.

The universality of Islamic finance and business is increasingly felt when countries such as Hong Kong, Beijing, and even Moscow in Russia are actively involved in establishing sharia financial institutions, especially Islamic banking. Countries that have so far been assumed to be closely affiliated with the ideology of communism or socialism have very openly accepted the presence of the Islamic financial system.

Therefore, Islamic business is no longer limited to people with certain ideological and religious backgrounds, even though it was originally pioneered by Muslims (Lewis, 2010, Triyanta, 2014, Faizi, 2021).

Nowadays, the development of Islamic financial institutions and businesses cannot be separated from the role of Islamic scholars and economists both as individuals and in religious fatwa institutions. Their central role is usually directed to provide religious views faced by the ummah to find an Islamic legal view of the existing problems in a thorough, firm, and final manner (Mubarak, 2013). Besides, the ulama is also manifested in Islamic fatwa institutions that will carry out *ijtihad* to solve certain problems faced by the people. To foster Islamic financial institutions, the ulama transformed into sharia advisers who created many guidelines for industries such as the National Sharia Council, and the Sharia Supervisory Board for companies that apply sharia principles. They did not only provide a view of Islamic law for the development of sharia products but also provided strategic direction and input for the development of the sharia industry by issuing fatwas that bind market players (Fakhrunnas, 2018). The ultimate of objective is to promote a sharia industry in various financial sectors needed by the people.

The fatwa of National Sharia Council was made at the request of the *mustafti* (industry/association/regulator) which generally intends to serve as a guide in the preparation of business regulations using the sharia system, and/or as a business guide for industry parties. Based on the request of the community that cannot be separated from market demands and other business needs, the basic character of the fatwa should be dynamic and flexible (Amin, 2012). This flexibility cannot be separated from the position of a mufti (ulama) in responding to *mustafti* (industry/regulator/association) questions which are based on the dynamics of today's sharia business and finance which tend to be fast and dynamic (Faizi, 2021).

The results of thinking in producing fatwas on Islamic financial products and services are originate from the *ijtihad* of the ulama and sharia economists who are members of an official institution called the National Sharia Council. This institution has the sole authority in issuing fatwas on sharia economics and finance, of course in the framework of developing the Islamic industry in Indonesia.

Methodology

The focus of this study is to describe the patterns of *ijtihad* used in establishing the National Sharia Council fatwa regarding sharia products in the Islamic financial industry in Indonesia. From the pattern of *ijtihad*, the full fatwa concept in Islamic financial law can be fully revealed. Thus, through this research, it is expected that it can develop new types of Islamic financial products to meet the needs of the community. The data of this study adopted the data in the research by Yulianti (2007) about fatwas on sharia products in 1999-2003. Meanwhile, Maksu (2015) was used for the study of Islamic product fatwas from 2000-2010. Thus, this study used secondary data sources including scientific journals, literature, and other research materials. Besides, it was

strengthened by literature studies on regulations/fatwas of the National Sharia Council or literature related to the issues to be studied.

The data collected from the literature study was analyzed using qualitative methods. In this case, the data obtained from the research results were categorized and selected, then linked to the problem to be studied, so that it could answer the problem formulation. Data were compiled through careful observation, including analysis of documents and records. This qualitative research used inductive thinking, namely patterns of thought and ways of concluding starting from a symptom and facts one by one, which can then be taken as a generalization (general provisions) as a conclusion (K.Yin, 2009).

Result and Discussion

1. General Principles of Islamic Economics

The economy is a human problem that always develops according to its context. This requires new thinking for solving various problems that are always growing fast. The sickness of *ijtihad* is something that cannot be avoided, even though it is very useful to refer to the time of the Prophet and his Companions (Laldin, 2012, Fakhrunnas, 2018).

The existing classical *fiqh muamalat* is no longer fully relevant because the forms and patterns of traction develop so fast in this modern era. Society's socio-economy and business have changed considerably compared to the conditions of the lamp period. Related to economic issues, there are some general rules or principles of Islam that must be met in the major changes or *muamalat* economic problems. These general principles are in line with the general principles of Islamic economic law (Ibrahim, 2000, Masyhuri, 2005, Faizi, 2021). There is no difference between the sources of Islamic law in general and the sources of Islamic economic law. Because economic studies in Islam are part of the discussion of Islamic law. Thus, the source of law is the same, namely the Qur'an, Sunnah, *Ijma'*, fatwas of the Prophet's companions, *Qiyas*, *Istihsan*, *Uraf*, *Maslahah Mursalah*, *Sadd adzara'i*, *Istishab*, and *Syar'un man qablana*.

Every economic activity must be based on the sources of Islamic economic law and must not conflict with the principles of Islamic economics in conducting *ijtihad* on a religious phenomenon. In Islamic economics, there are basic principles that must be fulfilled by a human being (the interaction between humans in the economic field). The principles of Islamic economics (i) are original that the economic activity may be carried out until there are arguments that prohibit it, (ii) the economic activity should be carried out *consensually* (*between adins*), (iii) the economic activity carried out should be *maslahat* and reject *mudharat*, and (iv) these economic activities are apart from the elements of *gharar*, *usury*, *tyranny*, and other elements that are forbidden based on *sharia'*. Thus, these principles must serve as the rules for carrying out economic activities (Ayub, 2002, Al-Ba'li, 2003, Idri & Baru, 2017).

The first principle implies that the law of all economic activity is initially permitted. This ability as long as it is not or has not been found in the texts of the Qur'an and Al-Hadith which state its prohibition. When a text is found that says haram, then at that time the muamalat contract becomes prohibited based on shariah values. The principle of Islamic economics refers to the general provisions contained in the Qur'an, Al-Baqarah verse 29 which means "It is He who created for you all of that which is on the earth."

The second principle of Islamic economics is muamalat. It should be done consensually and there is no element of coercion from any party. If there is an element of coercion found in economic activity (*ikrah*), then the economic activity is canceled based on sharia. The principle of muamalat is based on the text contained in the Qur'an, An-nisa' verse 29, which means "O you who have believed, do not consume one another's wealth unjustly but only [in lawful] business by mutual consent."

Meanwhile, the third principle is to bring benefits and reject harm to human life. This principle implies that the economic activities carried out should pay attention to the benefits aspects. Therefore, the economic activities carried out should realize the goals of Islamic law (*maqashid al-syari'ah*), i.e. to create benefits for humans. If it turns out that these economic activities can bring *maslahah* to human life, then at that time the law may be continued and even must be implemented. However, if it brings *madharat*, it must be stopped.

The third principle is generally based on the words of Allah in Surah al-Anbiya verse 107 which means "We have not sent you (O Muhammad) except as a mercy to the universes." Grace in this verse can be interpreted as taking advantage of and rejecting *madharat*. This meaning is substantially in line with what is shown in the Qur'an surah Al-Baqarah verse 185 which says "Allah intends for you ease and does not intend for you hardship" and Surah An-Nisa 'verse 28 which means "And Allah wants to lighten for you [your difficulties], and mankind was created weak."

The last principle of economic activity must be avoided from the elements of *gharar*, *usury*, *dzhulm*, and other elements that are forbidden based on sharia. The Islamic financial institution permits every activity between fellow human beings which is carried out based on upholding truth, justice, upholding the benefit of humans on the provisions allowed by Allah SWT. Therefore, Islamic law prohibits any economic activity that is mixed with tyranny, fraud, trickery, obscurity, and things that are forbidden and prohibited by Allah SWT. Thus, it can be understood that economic activity can be considered valid if it meets these Islamic economic principles.

2. Sharia Supervisory Model

a. The role of the National Sharia Council in Sharia Fatwas

In 1990, the workshop hosted by Islamic scholars about bank interest concluded that interest was still allowed on an emergency basis. KH. Hasan Basri

stated that there were two views in Islam regarding interest. In the first view, the bank interest is *haram* because it contains additional elements of payment (*ziyadah*) and without risk (*muqobil*). The additional payment is implied in the agreement and can lead to extortion. The second opinion legalizes bank interest because of the voluntary element between the two parties, there is no extortion and it has a function for the public interest. However, at the workshop, there was a strong demand for an Islamic bank (Harahap & Basri, 2004, Maksum, 2015).

Therefore, as suggested by MUI and ICMI as well as other Islamic scholars, the first Islamic bank was formed in 1991 named Bank Muamalat Indonesia (BMI). The bank started operating in 1992. In 1992, after the establishment of the BMI, the banking law was issued in 1992 which launched a dual banking system policy and was further strengthened by clarified No. 10 in 1998 on amendments to Banking Law No.7/1992. Law No. 10/1998 stated that Islamic banking was developed rapidly with the formation of Islamic Commercial Banks, Islamic Business Units, BPRS, BMT (Antonio, 2001). Since there was a real need, especially a fear of different fatwas issued by the Sharia Supervisory Board in each Islamic Financial Institutions, so on February 10, 1999, the National Sharia Council was formed with the Sharia Supervisory Board served as an extension of the National Sharia Council for supervision and guarantee of sharia principles in the internal of Islamic banks and others.

The main function of the National Sharia Council is to oversee sharia products to comply with Islamic law. This council does not only oversee Islamic banks but also other institutions such as mutual funds, venture capital, etc. For monitoring, the National Sharia Council has developed a sharia product guideline, i.e. the sources of Islamic law. These guidelines serve as guidelines for Islamic financial institutions as the basis for developing their products (Khotibul Umam, 2012, Zaini et al., 2019). Another function of the National Sharia Council is to research and make fatwas on products developed by Islamic financial institutions and submitted by management after the Sharia Supervisory Board recommendation to the institution concerned. In the implementation of Law No. 10/1998, various Bank Indonesia's regulations were issued in consultation with the National Sharia Council (Khotibul Umam, 2012). In the development of sharia regulations after waiting for a long time from Bank Indonesia, on December 16, 2003, the Indonesian Ulama Council declared that bank interest is *haram* because it is included in the category of usury and the law of usury is *haram*.

Responding to the emergence of the MUI's fatwa regarding bank interest, PBNU and Muhammadiyah considered that the MUI's fatwa prohibiting bank interest and insurance was a hasty decision. According to Masdar F Mas'udi, the MUI's fatwa is a legal opinion that is not coercive and non-binding (Wibowo, 2008, Afandi, 2001). Responding to the polemic that accompanied the emergence of the MUI's fatwa regarding bank interest including the usury category, the Chairman of MUI, at the time KH. Ma'ruf Amin asked the public not to be worried about the

issuance of the MUI's fatwa. The fatwa is flexible and non-binding so that the public does not have to withdraw their funds from conventional banks (Syam, 2012). At that time, The Indonesian Ulema Council only anticipated that there would be no rush in withdrawing customer funds at conventional banks. However, The Indonesian Ulema Council remained unanimous opinion that the bank interest has a usury element and usury is unlawful (Antonio, 2001). Therefore, The Indonesian Ulema Council continued to socialize its fatwa for 2 consecutive years in 2005-2006 by launching the Sharia Economic Movement. Until now, sharia economic products have continued to develop, both bank and non-bank financial institutions that require MUI fatwas according to the development of sharia banking.

The main role of The Indonesian Ulama Council to carry out and function the National Sharia Council and Sharia Supervisory Board according to the standard operating procedures in the two institutions. National Sharia Council issues sharia fatwas following the development of products issued by Islamic banks. While the Sharia Supervisory Board is the executor of the National Sharia Council and oversees the implementation of Islamic principles in each Islamic financial institution. These duties and functions are carried out with due observance of the Islamic banking law and Bank Indonesia's regulations which are the technical regulations of the bank. Maksum (2015) has noted the National Sharia Council has issued more and more fatwas on Islamic economics and finance in Indonesia to support the development of the Islamic industry. Almost 78 fatwas have been issued, however, there are still many fatwas that have been requested to be made to the National Sharia Council.

The existence of Islamic fatwas issued by the National Sharia Council has been very important in the framework of supporting the development of the Islamic banking industry and other Islamic financial industries in Indonesia. Because of carrying out such a strategic mandate, National Sharia Council has been very productive in issuing sharia fatwas, of course, all are directed at major projects in the development of the sharia banking industry in Indonesia. Even up to 2010, 78 fatwas had been issued since the first time they were assigned to issue these fatwas. Those 78 fatwas are divided into nine categories. The biggest details are 50 fatwas for Islamic banking, including fatwas on raising funds (3 fatwas), distribution of funds (35 fatwas), services (9 fatwas), and treasury (4 fatwas) followed by fatwas on Bank Indonesia (3 fatwas), sharia capital market (13 fatwas), sharia insurance (5 fatwas), sharia pawnshop (5 fatwas), sharia accounting (2 fatwas), sharia financing company (1 fatwa), sharia guarantee (1 fatwa), sharia guarantee (1fatwa), and Sharia-level Direct Selling company/PLBS (1 fatwa) (Syam, 2010).

b. The Role of the Sharia Supervisory Board in Islamic Institutions

Sharia banking and other Islamic financial institutions are fostered and developed with the values and principles of sharia law, so their entire financial

activities must be following sharia principles. The fulfillment of this aspect of sharia will be adding value in the process of administering Islamic banking and other Islamic financial institutions (Grassa, 2013). The form of sharia supervisors in all sharia banking institutions and sharia finance is an effort to ensure that sharia values and principles are applied appropriately to the relevant sharia industry activities. Besides, it plays an important role in the negotiation process with sharia banking managers, especially on the day-to-day practice of financial institutions by providing advice and opinions to them. Zulkifli Hasan said that:

"... Sharia is a unique characteristic of Islamic finance. The need for an efficient Shariah supervisory system for IFIs is considered a crucial requirement to ensure the development and stability of the Islamic finance industry. Indeed, the success of any Islamic finance system in any country depends largely on the belief of the stakeholders that all components of the system must comply with Sharia principles and rules" (Hasan, 2010).

All activities of Islamic financial institutions and banking are based on sharia principles and laws, so compliance with sharia regulations is the main issue. The risk of non-compliance with sharia may lead to a serious impression on the sustainability of the activity of Islamic banking in particular and the construction of the system financially sharia in general (Choudhury & Alam, 2013). Thus, the need for strengthening the system of supervision in sharia is efficiently regarded as one of the elements important for promoting the stability of the Islamic banking sector and Islamic finance (Rammal, 2006). With this desire, corporate management in Islamic financial institutions and banking need to establish various institutional arrangements to supervise aspects of sharia compliance in their overall financial activities.

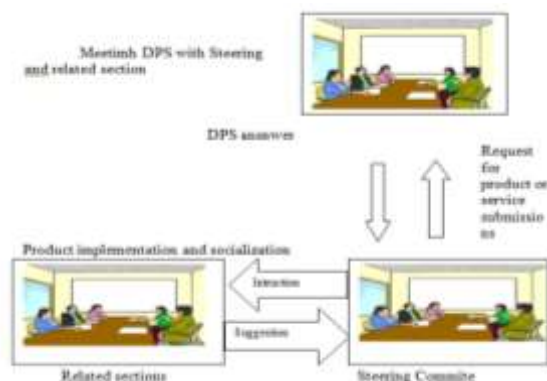
One of the most powerful institutional designations to ensure compliance with the relevant sharia principles is the sharia supervisory institution. This institution plays an important role in all aspects of sharia, starting from supervision, monitoring, auditing, and issuing regulations, sharia fatwas, and product development and services in sharia banking in particular and sharia financial institutions in general. In this case, Wafik Grais said that:

"In parallel with the increasing growth of Islamic finance globally and the complexity of the Islamic finance products and services, the shariah board has become the most important component of the Shariah governance system in Islamic finance that has a deep influence on the day-to-day practice of Islamic finance. Setting a Sharia board assures stakeholders that the IFIs drive their business following sharia" (Grassa, 2013).

The existence of this sharia supervisory institution cannot be separated from the principles of sharia product development, where the overall development of new products and services for Islamic financial and banking institutions must be following the principles and values of sharia and a sharia power office has been passed, which consists of a panel of scholars who are experts in science, fiqh,

sharia legislation, and economics as well as micro and macroeconomics (Masse, 2018). Thus, the existence of a sharia supervisory institution should be given the power in carrying out its duties and functions to achieve the overall objectives of the sharia industry which have been well designed. At the same time, they may guard properly the implementation of sharia principles in all commercial activities carried out.

In the context of Indonesia, the main duties, functions, and powers of the Sharia Supervisory Board as explained by Triandaru (2009) are as follows: (i) Its main task is to supervise whole business activities in sharia financial institutions so that they are following the provisions and principles of sharia that have been decided by National Sharia Council; (ii) Its main function is to supervise and provide input to directors, chairman of the sharia business unit and chairman of the sharia branch relating to cases related to aspects of sharia and an intermediary between sharia financial institutions and sharia guards. In this case, the National Sharia Council submitted drafting proposals for product development and services from sharia financial institutions that require a fatwa review from the National Sharia Council; (iii) The main power is to provide general guidelines regarding aspects of sharia and the implementation of sharia financial institutions, the movement of funds, and other activities than banking concerning on and raising the level of any existing sharia financial institution products that are currently running. However, the implementation faces some conflicts with sharia principles (Faizi, 2021b). Antonio (2001) explained the stages and working procedures of the Sharia Supervisory Board as follows:



Source: Modified from Antonio (2001).

Based on the figure above, the stages and working procedures between the sharia financial institution and the manifest sharia supervisory board are through a meeting mechanism in determining a product or service as a facility offered to customers in conducting transactions or business management at sharia financial institutions. Subsequently, the sharia supervisory board accepts proposals and suggestions from sharia financial institutions to be studied in-depth and thoroughly, considering the main duty of the sharia supervisory is to supervise the mechanisms and stages that financial institutions carry out are appropriate or

not by sharia principles. Besides, the products offered to customers do not conflict with sharia principles. The government's recognition of the position of Islamic scholars or experts in the process of sharia supervision at Islamic financial institutions and banking in Indonesia is strengthened in the royal laws. There are at least three laws, namely Law No. 40/2007 on Limited Liability Companies, Law No. 19/2008 on National Sharia Securities, and Law No. 21/2008 on Islamic Banking which are special provisions of Islamic banking in Indonesia.

Article 109 of Law No. 40/2007 clearly explains the possibility of establishing sharia-based commerce and the position of scholars or sharia experts as supervisors of sharia commerce. Paragraph (1) A national's company that carries out business activities based on sharia principles in addition to having a Board of Commissioners must have a Sharia Supervisory Board; (2) The Sharia Supervisory Board as referred to in paragraph (1) consists of one or more sharia experts who are appointed by the General Meeting of Shareholders on the reserves of the Indonesian Ulama Council; (3) The Sharia Supervisory Board as referred to in paragraph (1) has the task of providing advice and suggestions to directors as well as supervising the activities of the company to comply with sharia principles.

Referring to the development of commercial activities based on sharia principles, this law requires companies that carry out business activities based on sharia principles and have a Board of Commissioners to also have a Sharia Supervisory Board. Article 25 of Law No. 19/2008 on National Sharia Securities states that: "In the framework of issuing SBSN, the Minister requests a fatwa or statement on the conformity of SBSN to sharia principles from institutions that have the power to determine fatwas in the field of sharia." Then in the explanation section of the law, it is explained: "What is meant by an institution that has the power to determine fatwas in the field of sharia is the Indonesian Ulama Council or other institutions ordered by the government." Positive responses to the sharia fatwa are also shown by the financial authority in Indonesia. In December 2004, Bank Indonesia issued a sharia bank standard regulation. Through Decree No. 6/24/PBI/2004 signed on October 14, 2004, sharia compliance is determined by referring to the fatwa issued by the National Sharia Board and supervision by the Sharia Supervisory Board.

Article 32 the Law No. 21/2008 on Sharia Banking clearly states the obligation of sharia banks to have a Sharia Supervisory Board. Paragraph (1) states that the Sharia Supervisory Board must be established in sharia banks and conventional commercial banks that have Sharia Business Units; (2) The Sharia Supervisory Board as referred to in paragraph (1) is appointed by the General Meeting of Shareholders on the reserves of the Indonesian Ulama Council; (3) The Sharia Supervisory Board as referred to in paragraph (1) shall be tasked with providing advice and suggestions to directors as well as supervising bank activities to comply with sharia principles. Various statutory stipulations in the

Indonesian kingdom relating to sharia supervisory institutions in the financial industry and sharia banking have demonstrated the government's commitment to ensuring that the commercial activities carried out by Islamic financial institutions and banking in Indonesia are following the principles and values of sharia. The validity of the entire economic activity carried out which is taken from the viewpoint of Islamic law lies in its harmony with the values and principles of sharia.

3. An Empirical Study of the DSN's On Sharia Products

Yulianti (2007) wrote a study entitled "*Pattern of Ijtihad Fatwa of the National Sharia Council-MUI on Sharia Banking Products.*" This study aimed to describe the patterns of ijtihad used in establishing the DSN's fatwa on Islamic banking products. It was expected that the types of products can be developed to meet the needs of people by focusing on the DSN's ijtihad in establishing fatwas on Islamic banking products from 1999-2003.

This study used two approaches. First, the normative approach, in which researchers sought to examine legal principles against existing legal norms, especially those contained in the DSN - MUI fatwas regarding sharia banking products, which are used as the basis for sharia banking in its operations. Second, the historical-sociological (*social history*) approach. This social history approach was used because the DSN's fatwa is a product of Islamic legal thought which is the result of the interaction between Islamic legal thinkers with the social environment that surrounds it. The period studied in this study was from the establishment of the DSN from 1999-2003.

The fatwas collected by the researchers consisted of 38 (thirty-eight) fatwas from the National Sharia Council. In general, these fatwas can be grouped as follows: first, the fatwas for transaction activities carried out by sharia banking, both in the funding, financing, and servicing; second, the fatwas about accounting activities in sharia banking; third, the fatwas for sharia investment; and fourth, the fatwas for other sharia financial institutions such as insurance (Hajj Insurance), Rahn (Pawn), money/capital markets, foreign exchange markets, bonds, Wadiah certificates, and Mudharabah investment certificates. Regarding 38 (thirty-eight) fatwas, the researcher focused on 19 (nineteen) fatwas as follows:

- a. Fatwa for funds: 3 (three) fatwas:
 - 1) Fatwa on Giro
 - 2) Fatwa on Savings
 - 3) Fatwa on Deposits
- b. Fatwa for Distribution (financing): 9 (nine) fatwas
 - 1) Fatwa on Murabaha
 - 2) Fatwa concerning buying and selling greetings
 - 3) Fatwa on Istishna
 - 4) Fatwas on parallel Istishna

- 5) Fatwa on Mudarabah (Qirad) Financing
 - 6) Fatwa on Musharaka
 - 7) Fatwa on Ijarah
 - 8) Fatwa concerning Ijarah Munjukiyah Bi Tamlik
 - 9) Fatwa on Al Qard
- c. Fatwa for banking services: 7 (seven) fatwas:
- 1) Fatwa on Wakalah
 - 2) Fatwa on Kafalah
 - 3) Fatwas Life Insurance
 - 4) Fatwa on Save Deposit Box Services
 - 5) Fatwa on Transfer of Debt
 - 6) Fatwa on Import Letter of Credit
 - 7) Fatwa on Export Letter of Credit

The other 18 (eighteen) fatwas of the National Sharia Council were not studied because researchers focused on fatwas on sharia banking products, both funding, and landing. In terms of methodology, the three fatwas that were included in the fatwas of sharia banking fund collection products include the fatwa on deposits, fatwa on savings, and fatwa on deposits both using the argument from quotations from the Qur'an and Hadith, the argument of reason conveyed by the Islamic scholars, qiyas and ijma ulama as consideration for determining giro, savings, and deposits allowed by DSN. The model of ijtiḥad used by the DSN in determining the fatwas are *Qiyasi* (ta'lili) and *istislahi*. The ijtiḥad *qiyasi* is used when making an analogy between *mudharabah* transactions and *musaqah* transactions. In this case, *sahibul mal* (*mudharabah* is analogous to the owner of the garden (field) in *musaqah* and the manager (*mudharib*) is analogous to the cultivator of the garden (field). The *istislahi* (consideration of benefit based on the general text) is used when the fatwa responds to the community's interests in activities Sharia-based banking, which is based on the Qur'an surah An-Nisa' 29, Al Baqarah 198 and 283, Al Maidah 1-2, (Syam, 2006).

Regarding 9 (nine) fatwas on distribution products as described above show that the ijtiḥad used by the DSN in establishing these fatwas is the *istislahi*, i.e. the ijtiḥad which identifies problems that do not have a specific text as a reference. In this pattern, general verses are collected to create some general principles which are used to protect or bring certain benefits. Then the general principles are dedicated to the problem to be solved. These problems are buying and selling using the *murabahah*, buying and selling using the greeting method, buying and selling using the *istishna'* and parallel *istishna'* method, financing of *mudharabah*, *musyarakah*, *Ijarah*, *ijarah muntahiyah bi al-tamlik*, and *Qardh*. These problems do not have a specific text as a reference. Therefore, to determine the law, general principles are used which are drawn from the Qur'an, Al-Hadith, and Qaidah Fiqhiyah such as:

- a. Not eating (taking) each other's belongings by way of vanity, except through voluntary trading. (Al-Nisa '(4): 2)

- b. Buying and selling are permitted, and usury is forbidden (Al Baqarah (2): 275).
- c. Obligation to fulfill the contract or agreement (Al Maidah (5): 1)
- d. Give tough people who are in debt until they get out of trouble (Al Baqarah (2): 280)
- e. Peace can be carried out among the Muslims, except for peace that forbids what is lawful or justifies what is haram, and Muslims are bound by their conditions except those that forbid what is halal or justify what is haram. (Hadith narrated by Tirmidhi from Amr bin Auf)
- f. People who can afford it should not delay payment because it is an act of dzalim (Hadith narrated by Jama'ah)
- g. As long as your form is permitted unless it is forbidden (Fiqhiyah rules)
- h. If mu'amalah is not in cash until a certain time, it is recommended in writing. (Al Baqarah (2): 282)
- i. Do not endanger yourself or others (Ibn Majah, Daraquthni, and others from Abu Sa'id al-Khudri)
- j. The suggestion of fulfilling the mandate for some people who are trusted by others (Al-Baqarah (2): 283)
- k. Do not do dzalim for those who practice syarikah (Shad (38): 24)
- l. It is prohibited to commit treason for those who have a form (Abu Daud which was validated by Al Hakim, from Abu Hurairah)
- m. Allah has left the rank of some humans over some others so that some humans can use or take advantage of others (Az- Zukhruf (43): 32)
- n. Obligation to pay workers before their sweat dries (Ibn Majah from Ibn Umar).
- o. Avoiding mafsadat in the case of taking precedence over bringing benefit (Fiqhiyah rules)
- p. Difficulty can attract convenience (Fiqhiyah rules)
- q. The need to occupy an emergency position (Fiqhiyah rules)
- r. Not allowed to collect two forms of contract at once in one object (Ahmad from Ibnu Mas'ud).
- s. Where there is a benefit, there is Allah's law (Fiqhiyah rules), (Syam, 2006).

From these general principles, through deduction and consideration of levels of virtue such as daruriyat (essential needs), hajiyat (secondary needs), and tahsiniyat (luxury needs), the National Sharia Council conclude the launch and development capabilities of Islamic banking financing products through its fatwas. In this financing product, National Sharia Council also uses a *qiyas* method when analogizing *mudharabah* transactions to *musaqah* transactions.

Meanwhile, 7 (seven) fatwas on sharia banking products as in the description above show that the *ijtihad* used by National Sharia Council in determining these fatwas is the same with fatwas on distribution/financing products, i.e. *istislahi*. With this *istislahi* model, the National Sharia Council identifies problems in the forms of transactions that do not have a specific text as a reference. In using this *istislahi*, the National Sharia Council collects general verses to find general principles used to protect or bring benefit. Then the general principles are dedicated to the problems or

sharia banking products that will be launched by the National Sharia Council. The problems or transactions contained in these sharia banking service products are; *Wakalah*, *Kafalah*, *Hawalah*, Save Deposit Box Services, Debit Transfer, Import Letter of Credit, and Export Letter of Credit. In determining the law, general principles are used which are drawn from the verses of the Qur'an, Al-Hadith, and Qaidah Fiqhiyah such as:

- a. The ability to take care of someone as a representative in muamalat transactions (Al Kahfi (18): 19)
- b. The necessity of choosing a trustworthy representative and experienced (Yusuf (12): 55)
- c. The commandment to help in virtue and piety (Al Maidah (5): 2)
- d. The ability to appoint wali in muamalat (Malik in Al Muwaththa')
- e. The necessity of completing debt payments (Bukari from Abu Hurairah)
- f. The ability to make peace except for peace that forbids what is lawful or justifies what is haram (Tirmidhi, from Amir Bin Auf)
- g. All forms of muamalat can be done unless there are arguments that forbid (Fiqhiyah rules)
- h. It is permissible to guarantee someone's work to fulfill a muamalat obligation (Yusuf (12): 72)
- i. The necessity of removing heavy burdens (danger) (Fiqhiyah rules).
- j. Ability to transfer the obligation to pay debts to parties who can afford it (Bukhari)
- k. Obligation to provide workers with due payment (Al Baqarah (2): 233)
- l. The need to appoint trustworthy and capable employees/workers
- m. The requirement to pay wages to workers before their sweat is dry (Ibnu Majah from Ibn Umar)
- n. Commandments to keep promises (Al-Maidah (5): 1)
- o. All forms of buying and selling transactions are permitted and usury transactions are prohibited (Al-Baqarah (2): 275)
- p. Do not endanger (harm) yourself or others (Imam Ibn Majah, Al Daruquthni from Abu Sa'id Al-Khudri)
- q. Difficulty can attract ease (Fiqhiyah rules)
- r. The need to occupy an emergency position (Fiqhiyah rules)
- s. Something that applies based on custom is the same as something that applies based on syara' (as long as it does not conflict with sharia) (Fiqhiyah rules)
- t. Prohibition of eating other people's property in a vanity way, except using mutually voluntary commerce. (An Nisa '(4): 29), (Syam, 2006).

Maksum (2015) divides the DSN fatwa on Sharia banking into three groups, namely: funding, loans, and services. The fatwa for funding approved by DSN includes demand deposits, savings and deposits. The legal basis of the DSN fatwa for the three products, clearing, deposits, and savings, is the same. The foundations includes the principle of volunteerism, obligatory trust, the obligation to fulfill the contract, and all Muamalat practices originally allowed. In addition, the DSN fatwa also underlies the

berkah Mudharabah [Mudharabah blessing], the principle of independent contract, and cooperation.

Products for distribution of Sharia banking fund approved by DSN include murabahah, salam, istishna, mudharabah, musyarakah, ijarah, qardh, parallel istishna and ijarah muntahiyah bitamlik. Other products include Hajj financing, sharia checking account financing, Bank Indonesia wadi'ah certificate debt transfers, multi-financing services, line facility financing, sharia checking account financing with the musyaraka system, Certificates of Bank Indonesia Syariah, BICS with the ju'alah system, selling and buying gold on credit, and musyarakah mutanaqisah. Apart from these products, the DSN fatwa also legalizes the existence of fines, ta'wid, and installment discounts (Syam, 2010). Consideration of DSN fatwa generally regulates the gap in economic practices complying the principles of Islam, solidarity, and justice, win-win solutions, halal income for social activities, social welfare as the basis and purpose of law enforcement, protection of rights, legal assurance, rewards, and convenience.

Legal ethics derived from sources of Islamic law, including the Qur'an, Hadith, and fiqh as the basis for DSN fatwas generally embody the basic principles of commands and prohibitions in Sharia. In this regard, the legal basis for the distribution of funds in Islamic banking is resulted from the DSN fatwa concerns the principle of willingness, prohibition of usury, obligation to fulfill contracts, convenience, cooperation, freedom of contract, and prohibition of harming the others. Besides, other legal grounds includes respecting the importance of recording to support legal certainty, prohibition of all losses, fulfillment of contract terms, consideration of social welfare and prevention of loss, recognition of culture and social existence ('urf), and honesty. Products for sharia banking service ratified by the DSN fatwa are based on the wakalah, hawalah and kafalah contract systems. Other products include Sharia charge card services, Sharia cards, safe deposit boxes, gold pawning on a rahn basis, Sharia based import L/C, Sharia based export L/C, and L/C with contracts of kafalah bil ujah. Legal considerations for products of sharia banking service mainly occur because of the prevailing practices do not comply sharia principles (kafalah services and sharia credit cards) and apply an interest system (sharia cards), (Syam, 2010).

The legal ethics as outlined in the legal basis of the DSN fatwa stresses the obligation to meet the mandate, to help in kindness, to be friendliness in paying debts, freedom of contract, assisting others in paying debts, and principles of welfare establishment and harm prevention. In terms of card services, the DSN fatwa regulates several ethics by prohibiting waste, greed, and waste, fulfilling trust, prohibiting usury, making debt recording be a legal assurance, fulfilling customer rights, and acknowledging good traditions. Meanwhile, there are twenty fatwas of DSN regarding non-banks, namely sharia insurance, sharia capital market, and sharia pawnshops. In addition, DSN fatwas tend to dominate regulation of sharia capital market. Legal considerations from the DSN fatwa regarding sharia Reksa Dana include the prohibition of hoarding goods, leaving unproductive assets, improving the people's economy, ethics and sharia-based economy, deliberation to reach consensus (al-tarâ i-), justice (al-'adâlah), and prohibition to hurt each other (lâ darara Wala dirâr-). In

addition, other legal considerations in the fatwa are generally related to the incompatibility of financial practices with Sharia principles and the needs of the Sharia community (Syam, 2010). The legal basis applied in the DSN fatwa includes the principle of willingness, prohibition of usury, obligation to comply contract, freedom of contract, and prohibition to harm each other. Other ethical considerations include the obligation to fulfill the mandate, prohibition of gambling, convenience for customers, help in kindness, brotherhood, rights and obligations, the importance of intention, prohibition of practicing gharar, and the principle of welfare.

Legal ethics on Sharia Stock fatwas, multi-level marketing (MLM), and other sharia insurance policies are considered as leadership policies aimed at upholding welfare and social responsibility for both parties engaged in a contract. Legal norms in the DSN fatwa on Multi Level Marketing (MLM) include the prohibition of Bay' Hasat (buying and selling with wager) and Bay' Gharar (the deceptive buying and selling), prohibition of fraud, prohibition of selling dogs, pigs or corpses, prostitution, paranormal, prohibition of khamar [Liquor], and a condemn for corrupt persons (givers and recipients). Thus, from the aforementioned description, it can be understood that the existence and development of sharia products since their inception until now is very much needed by the community. In line with the current banking restructuring efforts, namely rebuilding a healthy banking system to support the national economic recovery and revival program, one of the efforts being made to optimize the functioning of the banking system is the development of the sharia banking system through Islamic banking products. The main objectives include:

- a. Meeting the need for banking services for people who cannot accept the concept of interest. The mobilization of public funds can be carried out more optimally, especially from segments of society that have so far not been touched by the conventional banking system. This condition is more developed with the response of the government and Bank Indonesia through the support of regulations or laws on sharia banking
- b. A financing opportunity for development of business based on the principle of shariah partnership
- c. The need for high different banking products and services that have unique advantages and are based on immoral values. These advantages include the elimination of sustainable interest charges, financing aimed at efforts to prevent environmental damage and moral damage.

Besides, the Islamic financial system which implements business financing with the principle of profit-sharing on its products as one of the main points of Islamic banking activities will also foster a sense of responsibility for each party, both the bank and its customers. Therefore, in carrying out its activities, all parties will essentially observe the principle of prudence and will minimize the possibility of business failure risk. Based on the aspect of fulfilling the community's needs for sharia banking products and services, the DSN-MUI is supposed to issue a fatwa for its procurement and

development. The National Sharia Council which consists of scholars has a key role in the development of sharia products. In general, the scholars have mastered and taught fiqh muamalat. Besides, they also understand the daily needs of people, because scholars live among their followers. From the relationship between the ulama and his followers. As Sakinah (2016) assert the role of product development by the ulama is twofold, namely:

- a. Absorbing the aspirations and financial needs of the people and then formulating them together with the shariah management.
- b. Disseminating the results of the formulation of these products to the public in the form of a fatwa, as well as informing the advantages of muamalat maaliyah products and their differences from interest banking products.

It needs to follow the concrete needs of the Indonesian people to encourage the quality of the DSN's fatwa on the development of the Islamic financial industry in Indonesia. Some progressive thoughts can be used as a starting point in producing quality fatwas (Agustianto, 2011, Sakinah, 2016, Faizi, 2021c).

- a. The structure and format of the DSN's fatwas are adequate with a modest formula. When compared with the fatwa Egyptian Mufti, for example, the DSN's fatwa is more complete in content. However, the DSN's fatwa format is only limited to determining the legal status of problems that are claimed to have not yet "scientific *ifadah*" in nature, i.e. providing the usefulness of enlightening scientific insights, so that it does not provide provisions for those outside the Islamic economic ulama.
- b. These fatwas should be disseminated by the Indonesian Ulama Council to the public so that people know about sharia economic laws. Unfortunately, regional MUI administrators sometimes do not have the DSN's fatwa book, even though it has been sent to the provincial MUI.
- c. The scholars must increase their knowledge of contemporary sharia economics through workshops, training, or seminars so that their insights become broad and can understand and even answer current problems validly and accurately not only in issues of religious studies, theological thoughts, rewards, heaven, and hell but comprehensive Islamic studies.
- d. It must be admitted that in the past when the new Islamic economy was developing in Indonesia, scholars and economic experts and practitioners had limitations in a comprehensive scientific issue of Islamic economics. Many conventional economists and economic practitioners were not experts in sharia sciences. They had a very strong Islamic spirit, but their scientific and educational background was not from sharia education, while many sharia experts did not understand the problems of the modern financial economy. They were mostly from abroad, pesantren, and state Islamic universities. In connection with this disparity dichotomy, the National Sharia Council synergizes with collective *ijtihad (ijtihad jama'i)*, so that fatwa products are relevant to modern developments and comply with sharia principles.

Conclusion

Based on the reality of social change in the field of muamalat which continues to develop rapidly as a result of accelerated globalization, *ijtihad* in producing sharia products are not a priori enough to rely on (referring) to classical books, because the *fiqh* muamalat formulation in the past has many irrelevances with the contemporary context. These formulations must be reformulated to answer all the problems and needs of a modern financial economy. *Fiqh* muamalat formulations that are complete, abundant, and detailed are found in classical *fiqh* books, most of which are the result of *ijtihad* of previous scholars in solving and responding to the economic challenges of their time. The formulation of their *fiqh* was influenced by whether or not it was colored by the socio-economic situation and conditions that existed at that time. The concept and formulation of classical *fiqh* in responding to the challenges of the existing modern economy need to be appreciated critically according to the context of the era, place, and situation then developed according to the times by using fresh *ijtihad*, of course, in the corridor of sharia. In the future, the National Sharia Council will be more creative and progressive in issuing fatwas related to enrich the Islamic financial industry which is in line with the real needs of the Indonesian people.

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