



**The Legitimation of Religion in Profit Seeking: The Role of National
Shari'ah Division of The Indonesian Muslim Council (DSN-MUI)**

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Abstract: Religious legitimacy is a potent means of achieving one's objectives, including the pursuit of economic benefits. This is how Islamic financial institutions employ the fatwa of the National Sharia Council (DSN-MUI) in their operations. Nonetheless, this objective is often in conflict with the noblest religious ideals of justice, equality, and humanity. This paper aims to explain how the DSN-MUI *fatwa* acquires religious legitimacy, as well as the repercussions of granting this legitimacy to the public that utilizes Islamic financial institutions. The collected data consists of the texts of DSN-MUI *fatwa* from 2000 to 2021 as well as the results of interviews with DSN-MUI practitioners of Islamic economics, and pertinent academicians. The data is then descriptively and critically analyzed. The findings of the study suggest that there are three *fatwa* issued by the DSN-MUI that legitimize profits gained by Islamic financial institutions. However, this method may violate significant religious norms. This paper also concludes that competition between conventional and Islamic financial institutions is a significant factor in the emergence of this legitimacy.

Keywords: The Legitimacy of Religion, Profit-Seeking, and the National Sharia Division of the Indonesia Muslim Council (DSN-MUI).

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Abtrak: Legitimasi agama merupakan cara ampuh untuk mencapai suatu tujuan termasuk dalam mencari keuntungan ekonomi. Hal itu sebagaimana yang dipraktikkan oleh lembaga keuangan syariah dengan menggunakan fatwa Dewan Syariah Nasional (DSN-MUI). Sementara tujuan itu terkadang berbenturan dengan tujuan tertinggi agama yaitu keadilan, persamaan, dan kemanusiaan. Tulisan ini bermaksud untuk menjelaskan bagaimana fatwa DSN MUI menjadi legitimasi keagamaan, faktor-faktor penyebab dan dampak dari pemberian legitimasi tersebut kepada masyarakat pengguna lembaga keuangan syariah. Data yang dikumpulkan berupa teks fatwa-fatwa DSN MUI dari tahun 2000-2021 dan hasil wawancara dengan DSN MUI, praktisi ekonomi Syariah, dan akademisi yang relevan. Data kemudian dianalisis secara deskriptif-kritis. Hasil penelitian menunjukkan bahwa ada tiga fatwa DSN MUI yang memberikan legitimasi untuk mendapatkan keuntungan yang dilakukan oleh lembaga keuangan syariah, namun cara tersebut bisa melanggar norma-norma substansial keagamaan. Tulisan ini juga menemukan bahwa persaingan antara lembaga keuangan syariah dengan lembaga keuangan konvensional merupakan faktor penting yang mempengaruhi timbulnya legitimasi tersebut.

Keywords: Legitimasi agama, Profit Seeking, Dewan Syariah Nasional-Majelis Ulama Indonesia (DSN-MUI)

Introduction

Religion is frequently employed as a means to pursue economic benefits through legitimacy. As promoted by the national Sharia Division of the Indonesian Ulama Council (DSN-MUI), Islamic financial institutions use religion as the premise for generating massive profits with religious legitimacy. This effort is taken by the DSN-MUI so that the Islamic Financial Institution assets do not leave behind those of the conventional financial institutions. Financially and managerially, Islamic financial institutions are still inferior to conventional financial institutions.¹ According to BI data, the assets of Islamic financial institutions account for no more than 6 percents of the total national financial assets. This indicates that Islamic financial institutions' assets continue to remain behind and do not meet public expectations. By legitimizing religion as the basis or reference for Islamic financial institutions' pursuit of profit, the DSN-MUI has created opportunities for the rejection of religious foundations and values. Aside from this, the DSN-MUI's actions will disregard the moral values that may be the primary objective of the non-profit transaction.

¹ Janosch Prinz and Enzo Rossi, 'State Legitimacy and Religious Accommodation: The Case of Sacred Places', *Journal of Law, Religion and State*, 9.1 (2021), 3–22 <<https://doi.org/10.1163/22124810-2020003>>.

Numerous studies on the existence of Islamic financial institutions have been conducted thus far. A large number of existing studies tend to indicate three issues. First, the existence of Islamic financial institutions as a means of strengthening the economy of the populace.² Second, opportunities and challenges for Islamic financial institutions.³ While some Muslim communities continue to choose Islamic financial institutions for transactions on the premise that they are more closely associated with religious values as their ideological foundation.⁴ Third, the existence of Islamic financial institutions as an economic support for the country.⁵ Previous studies indicate that Islamic financial institutions' use of religion as an instrument of legitimacy to pursue financial gain has not been scrutinized by any of the three existing studies that tend to focus more on normative aspects.

In addition to filling a gap in the literature, the purpose of this paper is to demonstrate that combining two transaction dimensions that are substantially contradictory is a viable strategy for the economic development of an *ijtihad* product. This paper explains three points in particular. Initially, the legality of

² Syamsuri Syamsuri and others, 'Implementation of Islamic Economic Empowerment Strategies in the Development of Human Resources', 409.*SoRes* 2019 (2020), 606–7 <<https://doi.org/10.2991/assehr.k.200225.131>>; Hanan Sabila and Endah Saptutyingsih, 'Islamic Philanthropy Empowerment Fund in Social Economic Affairs', *Journal of Economics Research and Social Sciences*, 4.1 (2020), 1–16 <<https://doi.org/10.18196/jerss.040115>>; Syamsuri Syamsuri and Zaimudin Al-Mahdi Moka, 'Strategy of Islamic Philanthropy Management for Economic Empowerment At Bmh Gerai Ponorogo Using Swot Approach', *International Journal of Islamic Business*, 6.1 (2022), 59–77 <<https://doi.org/10.32890/ijib2022.6.1.5>>.

³ Siti Nurain Muhamad and others, 'Islamic Financing for Small Medium Enterprises: Challenges and Opportunities', *Global Business Management Review (GBMR)*, 12.Number 2 (2020), 50–64 <<https://doi.org/10.32890/gbmr2020.12.2.4>>; Faricha Maf'ula and Denizar Abdurrahman Mi'raj, 'Islamic Insurance in Indonesia: Opportunities and Challenges on Developing the Industry', *Journal of Islamic Economic Laws*, 5.1 (2022), 116–38 <<https://doi.org/10.23917/jisel.v5i1.16764>>; Irum Saba and others, 'Fintech and Islamic Finance-Challenges and Opportunities', *Review of Economics and Development Studies*, 5.4 (2019), 581–90 <<https://doi.org/10.26710/reads.v5i4.887>>.

⁴ Mustaqim Pabbajah and others, 'The Factors of Service, Religiosity and Knowledge in the Decision of Customers To Save Funds in Sharia Banks in Yogyakarta City', *International Journal of Business, Humanities, Education and Social Sciences (IJBHES)*, 1.2 (2019), 13–26 <<https://doi.org/10.46923/ijbhes.v1i2.37>>.

⁵ Ainin Nur Mufidah and others, 'Integrated Economic Empowerment: Evidence in the Religious Area of Gusdur'S Tomb', *Jurnal Ekonomi Syariah Teori Dan Terapan*, 8.6 (2021), 785 <<https://doi.org/10.20473/vol8iss20216pp785-796>>; Zainal Arifin Hoesein, 'Sharia Economy in Indonesia from Constitutional Perspective', *International Journal of Civil Engineering and Technology*, 8.11 (2017), 1070–85; Dian Rizqi Khusnul Khotimah, 'Big Data: How Public Response to Islamic Economy in Indonesia during Pandemic?', *Al-Muzara'Ah*, 2022.2022 (2022), 1–16 <<https://doi.org/10.29244/jam.specialissue2022.1-16>>.

combining for-profit and non-profit transactions. Second, the legality of charging fees for transactions involving non-profits. The legitimacy that deceives us into averting usury is the third factor. The discussion of the three special objectives is elaborated upon in this paper's results and discussion.

This study is based on the argument that changing the purpose of the transaction as the primary objective of the contract (*maudu' al-aqdi*) from a non-profit transaction to a business transaction is permissible if the aim is beneficial, namely convenience and economic growth for the people. Thus, this argument also demonstrates that DSN-MUI supports the opinion of some contemporary scholars who permit the combination of non-profit and business transactions in order to facilitate the decade-long growth of modern transactions. The essence of the amendment is to convert the original non-profit contract's primary purpose into a business transaction. Formal provisions must be regarded because they serve as a shield against external religious provisions (*fiqh*).

Nevertheless, if greater benefit is the main consideration, this is possible because the benefit of non-obligatory worship has priority over the religious texts for human benefits, in this instance in the form of modern transactions. While the economy refers to the essence of religion, such as freedom from oppression, deception, inequality, and welfare, among others. Thus, the religious legitimacy (*fatwa*) carried out by the DSN-MUI to pursue profit in non-profit transactions appears to disregard the moral substance contained therein. On the other hand, the DSN-MUI wishes to develop greater benefits, so the rule states that if benefits and harm coexist, harm takes precedence. The rule is that injury must be less than benefit. In this instance, if legitimacy is not implemented, the harm will outweigh the benefits.

This research design employs a qualitative methodology with the use of a content analysis approach to review texts, specifically DSN-MUI *fatwa* pertaining to non-profit transactions that are used as a premise for profit-seeking by Islamic financial institutions or other modern economic actors. This analysis draws its information from the text of *fatwa* issued by the DSN-MUI from 2000 to 2022. In addition, sources of information were obtained from *fatwa* makers, practitioners of Islamic financial institutions and economists, and academic experts.

There were three methods employed for data collection. First, the Desk-Review is used to map the discourse surrounding DSN-MUI *fatwa* in preparation for interviews. The procedure converts non-profit *fatwa* and *fatwa* containing non-profit transactions issued between 2000 and 2022 to profit. In order to observe the implementation of non-profit *fatwa* practiced in Islamic financial institutions, observations and mapping were conducted. The third method involves conducting in-depth interviews. The purpose of the interviews was to determine the philosophical foundation and rationale for the practice of

DSN-MUI fatwas in Islamic financial institutions. Addressed to *fatwa*-makers, practitioners of Islamic financial institutions, and relevant academics.

In order to strengthen the data analysis, interviews with three categories of informants were conducted: academics, practitioners, and regulators. The reason for selecting the informant is detailed in the table below.

Table 1: Types of Participants

No	Categories	Description
1	Academicians	It is important to interview this category of participants to get sufficient information on the relationship between non-profit transactional theories and the modern economic practices
2	Practitioners	It is important to interview practitioners as to gain information on the non-profit transaction on the practical level
3	Regulator	To gain information on how the regulator accommodates all interests and identify which regulations to change and which to maintain

There are three phases of data analysis used in this study. Beginning with data reduction, followed by data display, and concluding through data verification. The purpose of the three phases of analysis is to make the data more meaningful and significant. With this stage of analysis, it is anticipated that an analytical understanding of the religious arguments used by DSN-MUI to obtain profits through its *fatwa* practiced in Islamic financial institutions will be attained. On research queries, data reduction was performed, followed by thematic selection of collected data. The article displays data using tables and interview excerpts. Comparison techniques are utilized to validate data during the analysis stage.

Religious Authority

Religion that is deeply entrenched in the society cannot be separated from beliefs in religious values and rules, where these rules provide limitations regarding prohibitions and recommendations that are used to legitimize every action by society.⁶ Prinz and Rossi state⁷ that legitimacy can be understood as a

⁶ Ariel Zellman and Davis Brown, 'Uneasy Lies the Crown: External Threats to Religious Legitimacy and Interstate Dispute Militarization', *Security Studies*, 31.1 (2022), 152–82 <<https://doi.org/10.1080/09636412.2022.2038664>>; Metin M. Coşgel and others, 'Identity,

subcategory of the concept of dominance, which is defined as probability, or as an order that must be obeyed by a group of people based on universally accepted values and norms. Weber believed that the process of legitimizing community actions is influenced by three factors: (1) the charisma of the leader (charismatic), (2) the consequences of custom or application of sanctions (traditional), and (3) the legality of the legal system (bureaucracy).⁸ Prinz and Rossi explain this context as a result of dysfunctional religious legitimacy in pre-industrial societies, where religious leaders' emphases on religious values and norms are no longer considered capable of contributing to social development.⁹

Legitimacy in the religious context is a crucial aspect of social life, as it ensures that people's actions are consistent with agreed-upon values and standards.¹⁰ To accommodate the understanding and conditions of the society, the process of legitimizing religious values and norms, which form the foundation of every community action, frequently raises a number of contextually relevant issues.¹¹ In order to collectively legitimize community actions based on religious values and norms, religious leaders must be involved, particularly in the dissemination of rules and *fatwa*.¹² In addition to demonstrating the legitimacy of community actions based on religious values and norms, polemics in its application, as experienced by religious authorities in establishing a *fatwa*, have been demonstrated in multiple studies.¹³ This is similar to the issue regarding the legitimization of the Prophet's birthday within a social and religious context that reflects the collective values of the state.¹⁴

Religion, and the State: The Origin of Theocracy', *Journal of Economic Behavior and Organization*, 179, April (2020), 608–22 <<https://doi.org/10.1016/j.jebo.2020.09.026>>; Prinz and Rossi.

⁷ Prinz and Rossi.

⁸ M. Zaidi Abdad, 'Signifikansi Fatwa DSN MUI Terhadap Perkembangan Ekonomi Syariah Di Indonesia', *Instinbath : Jurnal Hukum Dan Ekonomi Islam*, 18.2 (2019), 425–50.

⁹ Prinz and Rossi.

¹⁰ Avner Seror and others, 'Advances in the Economics of Religion', *Advances in the Economics of Religion*, April, 2019 <<https://doi.org/10.1007/978-3-319-98848-1>>.

¹¹ Miguel Hernando de Larramendi, 'Islam and Foreign Policy: The Case of Morocco', *Revista UNISCI*, 2018.47 (2018), 85–104 <<https://doi.org/10.31439/UNISCI-4>>; Jonathan Fox, 'An Introduction to Religion and Politics', *An Introduction to Religion and Politics*, 2018 <<https://doi.org/10.4324/9781315183787>>.

¹² F. Colonna, 'Cultural Resistance and Religious Legitimacy in Colonial Algeria', *Economy and Society*, 3.3 (1974), 233–252 <<https://doi.org/https://doi.org/10.1080/03085147400000013>>.

¹³ A. Shabana, 'Islamic Ethics and the Legitimacy of Scientific Innovation', *Sociology of Islam*, 8.2 (2020), 265–289 <<https://doi.org/https://doi.org/10.1163/22131418-00802006>>.

¹⁴ Muhammad Tahir Mansoori and others, 'Use of Hiyal in Islamic Finance and Its Shariah Legitimacy', *Journal of Islamic Business and Management*, 1.1 (2011), 69–92

Profit Seeking

Profit seeking is the progressive and efficient pursuit of profits by a company.¹⁵ In this context, profit-seeking is prevalent in economic activities within Muslim communities, as is the case in the Indonesian agriculture, plantation, livestock, and forestry sectors, as well as in the Islamic finance industry.¹⁶ Mashum et al.¹⁷ added that the practice of economic activities in Indonesia is frequently based on the concept of profit-seeking, which is comprised of seven concepts: (1) custom, (2) social capital, (3) verbal agreement, (4) profit sharing, (5) urf, (6) sharia compliance, and (7) *fiqh muamalah* or contracts.¹⁸ According to sociological, legal, and economic considerations, the practice of economic cooperation in Indonesian Muslim communities represents a highly profitable captive market for Islamic institutions. By emphasizing the profit-seeking aspect of sharia-based transactions conducted by Islamic banks in Indonesia, it has substantially impacted public confidence.¹⁹

In accordance with the Granoverterian attachment theory, which states that economic behavior, such as the practice of economic cooperation between Muslim communities in the archipelago, is structured and socially positioned social action, the process of sharing profits can elicit pro and con attitudes, as was the case in Turkey and Malaysia.²⁰ In the same vein,²¹ he stated that the

<https://jibm.org/wp-content/uploads/2018/02/Muhammad-Tahir-Mansoori_Use-of-Hiyal-in-Islamic-Finance-and-its-Shariah-legitimacy_JIBM_-vol_1-Issue-1_July-Dec-2011.pdf>.

¹⁵ Bing Xia and Junling Zhang, 'Profit Seeking versus Survival Seeking: Green Investment of Capital-Constrained Suppliers with Incentive Contracts', *Mathematical Problems in Engineering*, 2021 (2021) <<https://doi.org/10.1155/2021/6677187>>.

¹⁶ Ya Ming Liu, 'Understanding Profit Margins of Medical Providers from Prescription Drugs: Evidence from Taiwan', *International Health*, 12.4 (2020), 272–80 <<https://doi.org/10.1093/INTHEALTH/IHZ072>>; Jeroen Derwall and others, 'A Tale of Values-Driven and Profit-Seeking Social Investors', *International Health*, 2010; AM Hafidz Mashum and others, 'Nusantara Syariah Economy (Construction of Economic Cooperation between the Indonesian Muslim Community)', *IQTISHODUNA: Jurnal Ekonomi Islam*, 9.2 (2020), 197 <<https://doi.org/10.36835/iqtishoduna.v9i2.490>>.

¹⁷ Mashum and others.

¹⁸ E F Hastuti and I M Mubarrok, 'Analisis Kinerja Perbankan Syari'ah Di Indonesia Pendekatan Maqashid Syari'ah', *1st International Conference on ...*, 2.3 (2020), 54–61 <<http://incomora.unim.ac.id/index.php/InCoMora/article/view/46>>.

¹⁹ Mustofa, 'An Analysis of Sharia Economic Law on Takeover from Conventional Bank to Bank Syariah Mandiri Branch in Ciamis', *Madania: Jurnal Kajian Keislaman*, 23.2 (2019), 147–56 <<https://doi.org/http://dx.doi.org/10.29300/madania.v23i2.2511>>.

²⁰ Issa Khan and others, 'Critical Review on Issues and Challenges of Malaysian Islamic Financial System', *Journal of Southwest Jiaotong University*, 56.2 (2021), 552–67 <<https://doi.org/10.35741/issn.0258-2724.56.2.45>>; Murat Ustaoglu, 'Empirically Analyzing Public Views on Participation Banks in Turkey: A Survey by Education and Income Level',

concept of profit-seeking at Islamic institutions in Tasmania in the practice of *mudharabah* financing under conventional regulatory regimes has sparked numerous debates regarding the alignment of state regulations with Islamic financial regulations. In Muslim-majority nations, such as Malaysia, the concept of profit-seeking has sparked a variety of controversies. In Malaysia, profit-seeking is legitimized by *Shari'a* values if it is used to implement a profit-sharing system deemed ideal by Islamic economists in the form of a fatwa.²² and the fatwa decision stipulated by Islamic religious authorities regarding the concept of profit-seeking in Islamic and conventional banking systems has been issued in 14 nations over the past five years.²³

National Council on Sharia

In Indonesia, the National Sharia Division, also known as DSN-MUI, was established in order to realize the economic aspirations of Muslims.²⁴ Afrelian and Furqon²⁵ added that, in an economic context, the National Sharia Division-Indonesian *Ulama* Council (DSN-MUI) is tasked with ensuring the application of sharia principles in Islamic financial institutions in the form of *fatwa* demanded by *sharia* economic practitioners. The *fatwa* issued by the National *Sharia* Division-Indonesian *Ulama* Council (DSN-MUI) is a recommendatory. However, when it comes to positive law, the *fatwa* from the National *Sharia* Council-Indonesian *Ulama* Council (DSN-MUI) has the same

International Journal of Ethics and Systems, 34.4 (2018), 510–26
<<https://doi.org/10.1108/IJOES-04-2018-0062>>.

²¹ Habiba H. Omar and Mohd E. Yusoff, 'Central Bank Impact on Practicing Mudarabah Financing in Islamic Banks: The Case of Tanzania', *Banks and Bank Systems*, 14.1 (2019), 81–93 <[https://doi.org/10.21511/bbs.14\(1\).2019.08](https://doi.org/10.21511/bbs.14(1).2019.08)>.

²² Hideki Kitamura, 'Who Pioneered Islamic Banking in Malaysia? The Background of the Pioneers of Bank Islam Malaysia Berhad', *Contemporary Islam*, 40.2 (2020) <<https://doi.org/https://doi.org/10.1177/1868103420972406>>.

²³ Vu Trinh and others, 'Board Busyness, Performance and Financial Stability: Does Bank Type Matter?', *European Journal of Finance*, 26.7–8 (2020), 774–801 <<https://doi.org/10.1080/1351847X.2019.1636842>>.

²⁴ Muhamad Ibnu Afrelian and Imahda Khoiri Furqon, 'Legalitas Dan Otoritas Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Dalam Operasional Lembaga Keuangan Syariah', *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan*, 6.1 (2019), 1 <<https://doi.org/10.29300/mzn.v6i1.2195>>; Bukhoree Lateh, 'Multiple Contracts According to the Fatwa of National Sharia Council', *International Journal of Nusantara Islam*, 4.1 (2016), 41–48 <<https://doi.org/10.15575/ijni.v4i1.1184>>; Alfarid Fedro and others, 'Legal Analysis on the Fatwa of Sharia National Council on Rahn: Between Legal Philosophy and Its Implementation in Indonesian Sharia Pawnshop', *SSRN Electronic Journal*, V (2020), 1–27 <<https://doi.org/10.2139/ssrn.3590096>>.

²⁵ Afrelian and Furqon.

status as doctrine, namely as a legal reinforcement.²⁶ Therefore, in Indonesia, the *fatwa* issued by the National *Sharia* Division-Indonesian *Ulama* Council (DSN-MUI) also holds a position of authority and plays a significant role in the drafting of laws and regulations to advance the Islamic economy.²⁷

In Indonesia, *fatwa* issued by the National *Sharia* Division-Indonesian *Ulama* Council (DSN-MUI) are frequently used to resolve *sharia* economic disputes in the context of contract formation (Ibrahim & Salam, 2021). Indirectly, the substance of the National *Sharia* Division-Indonesian *Ulama* Council (DSN-MUI) *fatwa* has been adopted by laws and regulations, particularly in the resolution of *sharia* economic disputes (Djumardin & Isnaini, 2018; Hasanah, 2021; Sufyati, 2021). Therefore, the legal aspects contained in the *fatwa* of the National *Sharia* Division-Indonesian *Ulama* Council (DSN-MUI) contain various regulations pertaining to the operation of Islamic financial institutions, and have even been transformed into laws, so that the legal force of the Council's *fatwa*-the National *Sharia*-Indonesian *Ulama* Council (DSN-MUI) has increased in the operation of Islamic financial institutions (Fedro et al., 2020 In light of Law No. 12 of 2011), the DSN-MUI *fatwa* holds an important position in Indonesian Islamic financial institutions (Faozan, 2017).²⁸

***Fatwa* on the Integration of Non-Profit and Profit Transactions in accordance with Religious Scripture**

The DSN MUI *fatwa* that encourages the combination of non-profit and for-profit transactions is a form of religious legitimacy. The original intention of non-profit transactions/contracts was for the benefit of the Muslim communities, but they are then combined or added to profit-driven transactions. This step demonstrates the permissibility of a profit-seeking transaction by an Islamic financial institution. For instance, *Fatwa* No. 29/DSN-MUI/VI/2002 regarding the financing of *Hajj* administration is included in point 1's general provisions. The Islamic Financial Institution (*Lembaga Keuangan Syariah*, or LKS in the abbreviated term) provides a number of debts to customers as loans for registering *hajj* (and obtaining quotas), but on the other hand, LKS asks for

²⁶ Thohir Luth and others, 'The Investment Concept of *Sharia* Insurance According to National *Sharia* Council and Its Regulation in Indonesia', *Journal of Advanced Research in Law and Economics*, 8.7 (2017) <[https://doi.org/https://doi.org/10.14505/jarle.v8.7\(29\).18](https://doi.org/https://doi.org/10.14505/jarle.v8.7(29).18)>.

²⁷ Ahmad Khoirin Andi, 'Pola Dan Perkembangan Perbankan *Syariah* Di Indonesia', *Istidlal Jurnal Ekonomi Dan Hukum Islam*, 3.1 (2019), 34–41 <<https://doi.org/10.35316/istidlal.v3i1.127>>.

²⁸ Akhmad Faozan, 'Pola Dan Urgensi Positivisasi *Fatwa*-*Fatwa* Dewan *Syariah* Nasional Majelis *Ulama* Indonesia Tentang Perbankan *Syariah* Di Indonesia', *Al-Manahij: Jurnal Kajian Hukum Islam*, 10.2 (2016), 309–21 <<https://doi.org/https://doi.org/10.24090/mnh.v10i2.941>>.

compensation (*ujrah*) in managing *hajj*. The merger is in the form of the *al-qard* contract as receivables from LKS to prospective *hajj* consumers, which is then combined with the *al-ijarah* contract (leasing) for the costs of managing the *hajj* by the Islamic financial institution. The content of fatwa decision no. 21 concerning general guidelines for *sharia* insurance provides a further illustration. According to this *fatwa*, general provisions entail numerous transactions. This transaction involves both a *tabarru'* contract (non-profit) and a *tijarah* contract (profit transaction), according to the second provision.

Demands for modern forms of transactions involving multiple parties prompted the DSN-MUI to issue a fatwa for consolidating transactions, as disclosed by informant 1 (Dr. Hasanaudin, 55 years old), who stated that "current economic practices differ from those of the past. The ancient practice was typically straightforward and involved only two participants. While modern practices are extremely intricate. In the contemporary practice, at least three economic actors are involved. Therefore, the consolidation of these transactions is essential."

The impact of the merger of a number of these transactions demonstrates the permissibility of obtaining a number of benefits, making the merger between non-profit transactions and controversial profit transactions initially permissible.

Tabel 2. Evidence of Non-Profit Merging Transactions Including Non-Profit *wakalah*, *kafalah*, *hibah* dan *qard*

No	Fatwa DSN-MUI	Year
1	<i>Shari'ah</i> Insurance	2001
2	<i>Qard</i> Financing	2001
3	The <i>Shari'ah Reksadana</i> Investment	2001
4	<i>Hajj</i> Management Financing	2002
5	<i>Shari'ah</i> financing Electronic Account Statement	2002
6	<i>Sharia</i> Import and Export LC	2002
7	<i>Hajj</i> Insurance	2002
8	<i>Ijarah muntahiah bi tamlik</i>	2002
9	Debt Transfer	2002
10	<i>Sharia</i> checking account financing	2002
11	<i>Sharia</i> Import and Export LC	2002
12	PUAS	2002
13	Gold <i>Rahn</i>	2002
14	<i>Shari'ah Ijarah</i> Bond	2004
15	Multi-service Financing	2004
16	<i>Shari'ah</i> Charge card	2004
17	<i>Shari'ah</i> Insurance Product with <i>Wakalah bil ujarah</i>	2006

18	<i>Shari'āh</i> card	2006
19	<i>Sharia</i> -level direct sales	2009
20	LC with <i>kafalah bil ujarah</i>	2007
21	SBIS	2007
22	Settlement of receivables in Export	2007
23	<i>Rahn tasjily</i>	2008
24	<i>Shari'āh</i> Short-term Bills	2008
25	<i>Shari'āh</i> guarantee	2009

Source: The Compilation of the *fatwa* issued by DSN MUI, 2022

The table above demonstrates that there are 28 *fatwa* regarding non-profit transactions involving *wakalah*, *kafalah*, *rahn*, *grants*, and *qard*. The first serial number *fatwa* is about *wakalah*, the second serial number *fatwa* is about *kafalah*, and the fifteenth serial number *fatwa* is about multi-service financing as a basis for other *fatwa* in non-profit transactions.

It is assumed that the merging of non-profit and for-profit transactions is due to the fact that non-profit transactions seek virtue, which is contrary to the primary purpose of these transactions. As a result, non-profit and for-profit transactions are merged suggesting that these transactions can be conducted because they also aim to generate a profit, so that the initial primary objective, which was to create the impression of a profit transaction, was eclipsed by the existence of a profit transaction.²⁹ Non-profit transactions do not necessitate the transfer of surplus or profit from one party to another. By combining profit transactions, however, the profit can be justified and becomes the responsibility of one party to the other. The DSN-MUI seems to be citing the opinion of Nazih Hammad regarding the transformation of non-profit transactions into for-profit ones. The charitable transactions' positive intentions do not diminish their significance and beneficence. Because in this situation, benevolence is the obligation to pay a claim. So as not to disregard the primary objective of this non-profit transaction.³⁰

The consequence of combining non-profit and for-profit transactions is the neglect of fundamental religious values, such as those associated with brotherhood, equality, and balance. Non-profit transactions will foster harmonious fraternal relationships and foster social responsibility among fellow humans. This also demonstrates that the consolidation of transactions implies a disregard for moral values, contrary to the original intent of religiously regulating non-profit transactions. So that the formal legal value of a newly formed religious institutions is lost through merging, despite the fact that it can

²⁹ Liu.

³⁰ Nazih Hammad, *Mujam Al-Mustalah Al-Iqtisadiyyah Fi Lughah Al-Fuqaha*, 2015.

be justified from a formal legal standpoint. Legally and formally, nothing has been violated, but the substance of the *shari'a* governing the non-profit transaction has been violated.

The contextual school of thought interprets this prohibition in the context of *gharar*, usury, and *maysir* with regard to the principles derived from the *hadith* that states, "the Prophet forbade two transactions with a single object of the transaction." Obviously, the prohibition applies if *gharar*, avarice, and *maysir* are present in a combined transaction in the contemporary context, which is becoming increasingly modern and allows for the determination of whether a transaction contains these three elements. This is the strategy adopted by the DSN-MUI to mediate between textual and liberal schools.

Fatwa on Fee determination for charitable transactions

The second strategy adopted by Islamic financial institutions to legally legitimize the imposition of fees on transactions that should be actually free is the imposition of *ujrah* on transactions, despite the absence of a merger with an *ijarah* contract. For instance, the product case in *fatwa* No. 21/DSN-MUI/IX/2001 regarding sharia insurance in relation to the management of grant funds (non-profit transactions) states that *sharia* insurance companies receive fees (profits) from the management of grant funds (*tabarru*). The reward or fee is the result of a profit-based *ijarah* (leasing) contract, as described in the first section of the fatwa decision regarding the general provisions stating that the contract used is a commercial transaction. Explicitly establishing the fee is permissible with special provisions, as seen in the decision of Fatwa 39 of 2002 DSN MUI regarding *Hajj* insurance, which is discussed in point 6. the principle of justice and equity."

In the practice of *hajj* insurance, the insurer applies fee determination in managing the grant funds to obtain a fee (*ujrah*) or a fair and equitable profit. If the customer experiences a loss from investment funds, the insurer will provide debt (*qard*) to the customer, and the payment will be deducted from the profit.

There are factors that influence the setting of fees on non-profit transactions, including the requirement that Islamic financial institutions are profit institutions and not social institutions. Furthermore, Islamic financial institutions have numerous employees who must be compensated, as stated by informant 2 (45 years): "As a business entity, LKS collects funds from parties with a surplus of funds and then distributes them to parties with a deficit of funds." This is inevitable because LKS as a business entity has a number of employees whom must be paid. Furthermore, LKS will endure the risk of loss if something goes wrong to the funds it manages, which is known as cash management in banking terms.

The implication of charging a fee for each non-profit transaction is that the LKS will act as a business entity pursuing profit for the sake of sustainability, neglecting the transaction's substance because it seeks a greater benefit. The implementation of norms through text will complicate transactions and cause greater damage. in which the economy and Islamic financial institutions will stagnate and suffer increased damage.

Table 3. Fees for non-profit transactions

No	Fatwa of DSN MUI	Year
1	General Guideline of <i>Shari'āh</i> Insurance	2001
2	<i>Hajj</i> Insurance	2002
3	<i>Mudharabah musytarakah</i> contract on life insurance	2006
4	<i>Wakalah bil ujarah</i> contract on <i>Shari'āh</i> Insurance & Re-Insurance	2006
5	<i>Tabarru Shari'āh</i> Insurance and re-insurance	2006

Source: Authors' compilation of the *fatwa* of DSN MUI, 2022

The preceding table demonstrates that DSN-MUI issued five *fatwa* regarding the determination of fees for non-profit transactions, with the first *fatwa* serving as a general guideline.

The charge of fees on non-profit transactions is caused by the merging of non-profit and for-profit transactions, since the elements associated with economic actors do not permit for-profit transactions, and the insurance industry as the example. The element of a profit transaction is the use of *tabarru'* funds to obtain a charge, followed by the application of *al-wakalah bi ujarah* (fee on representative transactions),³¹ resulting in the charge of fees to pursue profits, even transactions are involved separately but are related for the shake of covering customer losses.

The implication is that it is very simple to gain profit in the name of religion or in a fatwa citing verses from the Qur'an and hadith, so that anything can be done solely for the sake of profit, even if it disregards the substance of the benefit that will be created by the purpose of the non-profit contract or transaction. With the existence of fees or rewards, the moral substance of the contract is lost, despite the fact that morality is the essence of prescribed non-profit transactions. Even though the argument for religious legitimacy is not explicitly presented, the verses used are verses and hadiths that call for virtue.³²

³¹ Sabila and Saptutyningasih.

³² Akhmad Faozan, 'Pola Dan Urgensi Positivisasi Fatwa-Fatwa Dewan Syariah Nasional Majleis Ulama Indonesia Tentang Perbnakan Syariah Di Indonesia', *Akhmad Faozan*, 10.December (2016), 309–21.

Utilizing Transaction Fatwas as a strategy to avoid Riba or Usury

Qard, *rahn*, and *wadi'ah* are loan products included in non-profit transactions that are not subject to wages. Using a combination of debt transactions, the DSN fatwa circumvents the prohibition on *qard* rewards. This initiative is a form of wage innovation intended to circumvent the prohibition against usury. DSN-MUI includes provisions to prevent debt transactions from receiving excess-related advantages. DSN-MUI requires that wages given are unrelated to the quantity of money owed when determining wages. In debt transactions, only administration fees are permitted.

There are also loans in the form of *qard* in *rahn* contracts. *Rahn* is the act of using an asset as collateral for financing or a loan. In *rahn* contracts, Islamic Financial Institution (Lembaga Keuangan Syariah-Abbreviated LKS) income cannot be based on the given *qard*.

Purchasing and selling currency or *sarf* is another example of a tactic used to avoid usury. Islamic banks with surplus funds will lend funds to other Islamic banks. When the assured return date arrives, the borrower's bank will return the money with a sum greater than the amount borrowed. The initial set of used contracts is the *al-qard* contract, which returns the same quantity of money. However, the excess funds borrowed are a consequence of investment transactions, as they are derived from the profits generated by managing that sum. This is the profit-making strategy of Islamic institutions.

The repercussions of competition between Islamic financial institutions (Lembaga Keuangan Syariah-LKS in the Indonesian abbreviation) and conventional financial institutions necessitate innovations and daring breakthroughs to enable Islamic financial institutions to develop themselves and reach the same position to that of the conventional banks. According to informant 1, "the competition between LKS and other conventional financial institutions is intensifying. With a market share for channelling funds of less than 6% over the past three years, Islamic financial institutions are still far behind their conventional counterparts. This situation requires LKS to make breakthroughs in its operations so that it can catch up with conventional financial institutions more quickly".

The prohibition of usury is a fundamental factor in Islamic economics that distinguishes it from conventional economics. The dilemma occurs between avoiding usury and the goal of seeking profit. Islamic financial institutions (LKS) whose main goal is to seek profit try to avoid money-debt-based contracts (*qard*) and replace them with goods-debt-based contracts (sale and purchase). The DSN MUI fatwa as a basis for the validity of contracts carries out a strategy so that the LKS contracts are protected from usury. Waiver of rights and obligations, for example in *murabaha* and *al-qard* merger transactions, is evidence of avoiding violating both in terms of formal legal

norms and from the value of morality as the substance of the purpose of the contract. The making of two different transactions, *al-qard* and *murabaha*, proves that dealing with usury is a violation of religion as its legitimacy. There are *al-qard* non-profit transactions so that taxes are not imposed in these transactions, besides, there are *murabaha* transactions to get around so as to avoid usury due to excess in debt loans.

In essence, all methods and steps will be taken by sharia or Islamic financial institutions with religious legitimacy to gain profit. As a result, there is support and arguments from religious legitimacy.³³ However, this tactic simplifies the rules that are limited by religion.³⁴

Profit-seeking with religious legitimacy through the pattern of the three methods is a strategy so that actions carried out by Islamic financial institutions or other Islamic economic actors can avoid formal *ribawi* matters. The argument is that it is demanded by the business world and that Islamic financial institutions and other economic actors can compete. However, the public's view will be different, moreover the religious authorities, in this case the DSN MUI, provide a way for this, so that sharia economic actors get support in the form of religious legitimacy to gain profit³⁵. The solution is that the government and those with religious authority provide a way by not enforcing the methods used so far, for example, non-profit transactions must be enforced on the track, namely not used for profit but applied for what they should be, however, profits could be gained without harming any parties; the transacting parties. In other words, if there are parties who wish to voluntarily provide benefits, then it is not prohibited. For example, the excess in giving debt is allowed by the debtor if it is not included in the transaction. As profit institutions, Islamic financial institutions can also take advantage of profit transactions which are principally intended to seek profit, so that non-profit transactions are not dragged down by religious legitimacy to gain these benefits.³⁶ Thus, the skewed view of society towards *sharia* financial institutions which are seen as more expensive and more tyrannical can be avoided.

Conclusion

It turns out that so far the benefits that *sharia* financial institutions have gained with the legitimacy of the MUI-DSN are considered by some to have ignored

³³ Fedro and others.

³⁴ (Andri sumitra 2018)

³⁵ M. Zaidi Abdad, 'Signifikansi Fatwa DSN MUI Terhadap Perkembangan Ekonomi Syariah Di Indonesia', *Instinbath : Jurnal Hukum Dan Ekonomi Islam*, 18.2 (2019).

³⁶ Nurul Izzati Lubis, 'Peran Masyarakat Ekonomi Syariah (Mes) Dalam Meningkatkan Literasi Keuangan Syariah Di Indonesia', *Peran Masyarakat Ekonomi Syariah (Mes) Dalam Meningkatkan Literasi Keuangan Syariah Di Indonesia*, 2019.

the main pillars of religion. This allows public to consider Islamic financial institutions and conventional financial institutions to be the same, even Islamic financial institutions are more tyrannical, and this assertion is not altogether faulty. This research shows that profit-seeking by Islamic financial institutions and other modern economic actors through religious legitimacy can ignore the moral substance of religion itself. This is because religion has provided signs that non-profit and profit transactions have their respective main objectives. Substance of non-profit transactions are primarily to provide benevolence to others while the main purpose of the profit transactions is to gain profit. Changing the main objective of the transaction with religious legitimacy will destroy the foundations of the religion that has been built.

Previous studies supported the legitimacy of religious legitimacy from the DSN-MUI, which was an innovative step forward. This study criticizes the legitimization of religion if religion is used as a tool to seek profits, despite the fact that solutions can be found to obtain these benefits.

In addition, informants as data sources are limited to *fatwa* makers, economists and practitioners of Islamic financial institutions, as well as academics, and have not included other stakeholders such as traditional and other religious leaders. Involving other stakeholders, such as traditional and other religious leaders, is necessary to understand how the search for profit is justified by religious legitimacy.

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