



From Normative Authority to Contextual Responsiveness: Theoretical and Empirical Analysis of DSN–MUI’s Transformation in Fatwa Formulation within Indonesia’s Islamic Finance Ecosystem

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Abstract: This study examines how the National Sharia Council of the Indonesian Council of Ulama (DSN–MUI) formulates and adapts fatwas amid increasing complexity in Islamic economic practice, addressing the problem of tension between classical *fiqh* normativity and contemporary transactional demands where explicit *naṣṣ* and *ijmā’* are limited. Specifically, the research asks: (1) how does DSN–MUI reconcile traditional *Sharī’ah* principles with novel financial needs; (2) what juristic tools and maxims inform its fatwa-making; and (3) what are the practical consequences for Islamic financial institutions (LKS) and consumers. Employing a qualitative doctrinal and socio-legal method, the study analyzes selected DSN–MUI fatwas focusing on the transformation of *tabarru’* contracts (*wakālah*, *hawālah*, *kafālah*) into *tijārī* frameworks and the evolving rulings on *muqāṣah* (early-payment discounts) in *murābahah* as primary data. The findings reveal a clear methodological shift from a strictly textual-normative approach toward a contextual, *maqāṣid*- and *maṣlahah*-oriented reasoning that treats *al-ashlu fil mu’āmalāt al-ibāḥah* as a governing hermeneutic; DSN–MUI legitimizes innovations (e.g., *wakālah bi al-ujrah*, *hawālah bi al-ujrah*, *kafālah bi al-ujrah*, and obligatory *muqāṣah*) while embedding procedural safeguards (pre-agreed nominal *ujrah*, protections against *ribā*, *gharar*, and *ziyādah ‘alā al-dayn*) to protect consumers. The study concludes that DSN–MUI functions as an adaptive *Sharī’ah* governance actor that balances normative fidelity, institutional viability, and public interest, recommending continued doctrinal clarity and empirical assessment of socio-economic impacts.

Keywords: DSN-MUI Fatwa, Stakeholder Theory, Alignment

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Abstrak: Penelitian ini mengkaji bagaimana Dewan Syariah Nasional Majelis Ulama Indonesia (DSN–MUI) merumuskan dan menyesuaikan fatwa di tengah meningkatnya kompleksitas praktik ekonomi Islam, dengan menyoroti persoalan ketegangan antara normativitas fiqh klasik dan tuntutan transaksi kontemporer ketika rujukan naṣṣ dan ijma' bersifat terbatas. Secara khusus, penelitian ini mengajukan pertanyaan: (1) bagaimana DSN–MUI merekonsiliasi prinsip-prinsip Shari'ah tradisional dengan kebutuhan keuangan yang baru; (2) instrumen dan kaidah fikih apa yang digunakan dalam proses perumusan fatwa; serta (3) apa implikasi praktisnya bagi lembaga keuangan syariah (LKS) dan konsumen. Dengan menggunakan metode kualitatif doktrinal dan sosio-legal, penelitian ini menganalisis sejumlah fatwa DSN–MUI terpilih sebagai data primer, dengan fokus pada transformasi akad tabarru' (wakalah, ḥawalah, kafalah) ke dalam kerangka tijārī, serta perkembangan ketentuan mengenai muqāṣah (potongan pembayaran dipercepat) dalam pembiayaan murābahah. Hasil penelitian menunjukkan adanya pergeseran metodologis yang jelas dari pendekatan tekstual-normatif yang ketat menuju penalaran kontekstual yang berorientasi pada maqāṣid dan maṣlaḥah, dengan menjadikan kaidah al-ashlu fil mu'amalāt al-ibāḥah sebagai kerangka hermeneutik utama. DSN–MUI melegitimasi berbagai inovasi, seperti wakalah bi al-ujrah, ḥawalah bi al-ujrah, kafalah bi al-ujrah, serta kewajiban muqāṣah, sekaligus menetapkan mekanisme pengamanan prosedural antara lain penetapan ujarah nominal yang disepakati di awal serta perlindungan dari unsur ribā, gharar, dan ziyādah 'alā al-dayn—guna melindungi konsumen. Penelitian ini menyimpulkan bahwa DSN–MUI berfungsi sebagai aktor tata kelola Shari'ah yang adaptif, yang berupaya menyeimbangkan kesetiaan normatif, keberlanjutan kelembagaan, dan kepentingan publik, serta merekomendasikan pentingnya kejelasan doktrinal yang berkelanjutan dan penguatan kajian empiris atas dampak sosial-ekonomi dari fatwa-fatwa tersebut. **Kata Kunci:** Fatwa DSN MUI, Teori Pemangku Kepentingan, Keberpihakan

Introduction

A fatwa is one of the essential instruments for providing legal guidance to *Muslims*, particularly in the context of Islamic economics and finance. In Indonesia, this role is officially undertaken by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). As an authoritative body responsible for issuing fatwas related to Islamic economics and finance, DSN-MUI has played a significant role in shaping the development of Islamic economic practices in the country.¹ However, the fatwas issued by DSN-MUI do not directly carry the

¹ Nur Sillaturohmah Handayani, et.al, “The Strategic Role of DSN-MUI in Developing Islamic Economic Law”, *Al-Iktisab: Journal of Islamic Economic Law*, Vol. 7, No. 1, 2023.

weight of positive law nor are they legally binding for Islamic financial institutions.²

In its early stages, the fatwas issued by DSN-MUI strictly adhered to the principles of *sharia* as outlined in the Qur'an and Hadith, as well as the *ijtihad* (independent reasoning) of scholars. DSN-MUI's compliance with the Qur'an and Hadith in forming *sharia* economic fatwas is a crucial aspect that establishes the legal validity and legitimacy of Islamic economic law in Indonesia. These fatwas are expected to reflect values such as justice, honesty, transparency, and equality, as taught in Islamic teachings.

The process of issuing fatwas begins with an in-depth study of the economic products or services in question.³ DSN-MUI refers to relevant texts in the Qur'an and Hadith while also considering the views of both classical and contemporary scholars. If explicit provisions cannot be found in the Qur'an or Hadith, DSN-MUI employs *ijtihad* methods, such as *qiyas* (analogy), *maslahah* (public interest), and *sadd al-dzari'ah* (preventing harm), to ensure that the fatwas align with *maqasid al-Shariah* (objectives of Sharia), which include protecting religion, life, intellect, lineage, and property. Over time, there has been a shift in focus toward issuing fatwas that are more aligned with the evolving needs of society. This shift corresponds to the general nature of Islamic law, which is adaptable to diverse social and cultural contexts.⁴

During DSN-MUI's formative phase, fatwas predominantly emphasized strict adherence to Sharia guidelines. This was achieved through a literal interpretation of the Qur'an, Hadith, and earlier scholars' *ijtihad*. Such a rigid application of *sharia* principles provided a solid foundation for the development of Islamic economics but often overlooked the complex dynamics and needs of contemporary society.

As public participation in the Islamic economic system increases, the National Sharia Board of the Indonesian Ulema Council (DSN-MUI) recognizes the need for fatwas that are more adaptive to the evolving socio-economic realities. According to Kaharuddin et al., an individual's financial knowledge and financial skills do not significantly influence the selection of Islamic financial

² Ipuk Widayanti dan Silvia Waning Hiyun Puspita Sari, "The Role of DSN-MUI Fatwa in Indonesian Sharia Banking Development Flows in the Industrial Revolution 4.0", *El-Qish: Journal of Islamic Economics*, Vol. 3, No. 1, (2023).

³ S. Farquhar, S. Kok, dan G. Giorgioni, "The trade-off between knowledge accumulation and independence: The case of the Shariah supervisory board within the Shariah governance and firm performance nexus", *Research in International Business and Finance*, vol. 59, artikel 101549, (2022).

⁴ Jouzas Valciukas, "Islamic Law: A Question of Adaptability", Disertasi, Mykolas Romeris University, Social Sciences, Law, 2018. <https://cris.mruni.eu/cris/entities/etd/ab89938c-48e4-46f9-8361-7c1f520f8bcf>

products.⁵ However, participation in Islamic financial products is also influenced by aspects such as socio-political identity, religiosity, attitudes, and local wisdom, which contribute to a shift in consumer behavior.^{6,7} This indicates that consumer behavior plays a significant role in decision-making by policymakers in the Islamic financial industry.⁸

Society, which consists of various segments with diverse needs, faces new challenges in applying Sharia principles in the modern era. Therefore, the National Sharia Board of the Indonesian Ulema Council (DSN-MUI) has started updating and reinterpreting previous fatwas, taking into account the conditions and needs of society while upholding the fundamental principles of Sharia. Furthermore, the merger of several state-owned Islamic banks into Bank Syariah Indonesia (BSI) has contributed to an increase in the Sharia compliance ratio⁹ and a wider customer base, thus creating a greater demand for a variety of Sharia financial schemes to meet these needs.¹⁰

This shift reflects DSN-MUI's efforts to bridge the idealism of Islamic law with practical realities. Fatwas are no longer merely seen as rigid doctrinal products but as dynamic and responsive legal instruments attuned to social contexts. Recent fatwas demonstrate this, accommodating the interests of various stakeholders, including Islamic financial institutions (IFIs), clients, and other key parties.¹¹

⁵ Kaharuddin, et al, "Impact of Sharia Financial Literacy, Local Wisdom, and Religiosity on the Judgment of the Bima Community to use Sharia Banking Products", in Proceedings of the 7th International Colloquium on Interdisciplinary Islamic Studies (ICIIS), (Banjarmasin: 6th Annual Postgraduate Conference on Muslim Society (APCoMS), 2024); Nuramalia Hasanah, Ibnu Qizam, Erika Amelia, and Nurul Hidayah, "Enhancing MSME Profitability: The Effect of Financial Literacy, Personal Capital, and Loan Utilization," *Studies in Big Data* 170 (2025), p. 167–174.

⁶ Muhammad Anwar Fathoni et.al, "Intention to participate in Islamic banking in Indonesia: Does socio-political identity matter?", *Journal of Islamic Marketing*, 2025.

⁷ M. Nasir, et.al, "Islamic Branding: Pertimbangan Rasional dan Ideologis dalam Pengambilan Keputusan Pembelian", *Harmoni*, Vol. 23, No. 2, (2024).

⁸ Muhammad Anwar Fathoni, *Identitas Sosiopolitik, Religiusitas, Motivasi Dan Reputasi: Dalam Perilaku Konsumen Muslim Terhadap Perbankan Syariah*, ed. Ahmad Rodoni, M. Nur Rianto, Nur Hidayah, (Jawa Tengah: PT. Pena Persada Kerta Utama, 2024).

⁹ Ainul Fatha, et.al, "Indonesian Business Culture and Sharia Compliance: Does Better Pre or Post Merger Policy?", *Jurnal Indo Islamika*, Vol. 14, No. 2, 2024; N. M. Haridan, A. F. S. Hassan, dan Y. Karbhari, "Governance, religious assurance and Islamic banks: Do Shariah boards effectively serve?", *Journal of Management & Governance*, vol. 22, 2018, p. 1015–1043.

¹⁰ Ainul Fatha Isman & Nur Hidayah, "Does the Merger of the Indonesian Islamic Bank Matter for Its Social Mission of Economic Empowerment?", *Etikonomi (Jurnal Ekonomi)*, Vol. 23, No. 2, (2024).

¹¹ M. Ayub, M. K. Hassan, dan I. Saba, "Revisiting the paradigm of Sharī'ah governance of Islamic financial institutions", *Journal of Islamic Accounting and Business Research*, vol. 15, no. 8, (2024), p. 1245–1265

This approach aligns with the *Fiqh Muamalah* rule in Islamic transactions: "*Al-Ashlu fil Mu'amalah al-Ibahah illa an yadulla dalil 'ala tahrimiha*" (The original rule in transactions is permissibility unless there is evidence prohibiting it). Based on this principle, scholars can conduct *ijtihad* to modify existing contractual mechanisms or formulate new ones, provided there are no explicit prohibitions in the Qur'an, Hadith, or scholarly consensus.

For instance, fatwas on contracts such as *wakalah* (agency), *kafalah* (guarantee), and *hawalah* (transfer of debt) have been revised to incorporate business (*tijari*) elements, which were previously classified as benevolent contracts (*tabarru'*). These changes allow IFIs to charge fees for specific services under these contracts, catering to the operational sustainability of these institutions.¹² This revision demonstrates DSN-MUI's consideration of both religious and economic realities faced by financial institutions.¹³

Similarly, this shift is evident in fatwas related to payment discounts in *murabahah* financing for customers who settle their payments earlier than scheduled. *Murabahah* is a financing contract where a financial institution purchases goods for a client, who then repays in installments.¹⁴ Customers sometimes make early payments to avoid defaults and increased costs. DSN-MUI's recent fatwas mandate financial institutions to provide discounts as a gesture of goodwill, benefiting both customers and fostering efficient fund management by IFIs.

The modernization of DSN-MUI fatwas underscores an effort to ensure their continued relevance in contemporary contexts. These fatwas must balance market dynamics and consumer behavior changes with the integrity of Sharia principles, ensuring the competitiveness and acceptability of Islamic economics.

However, this shift poses challenges. While adaptive fatwas enhance the appeal of Islamic economics, they may also raise concerns among conservative scholars and stakeholders who fear that excessive flexibility could dilute the essence of Sharia. Therefore, DSN-MUI must engage in effective outreach and involve various parties in the fatwa issuance process to ensure broad acceptance of these reforms.

Finding a balance between adhering to Sharia principles and addressing societal needs is crucial for DSN-MUI. The evolving focus in fatwa formulation

¹² Maryam Sofia Mohd Suhaimi, et.al, "Service Based Contracts Used in Islamic Finance: A Comparison of *Hawalah*, *Wakalah*, and *Kafalah*", *International Journal of Management and Applied Research*, Vol. 3, No. 4, (2016).

¹³ N. S. Virk, T. Nawaz, dan P. Molyneux, "A Canary in a Coalmine! Religious agency and its impact on the performance of Islamic banks", *Journal of International Financial Markets, Institutions & Money*, vol. 78, 2022, p. 101559

¹⁴ Nur Hidayah, Abdul Azis, and Moch. Bukhori Muslim, "Complying with Sharia While Exempting from Value-Added Tax: *Murābahah* in Indonesian Islamic Banks," *Ahkam: Jurnal Ilmu Syariah* 22, no. 1 (2022), p. 59–82.

reflects efforts to navigate these challenges. By considering the interests of all parties, DSN-MUI can ensure that its fatwas remain relevant, applicable, and legally robust.

To harmonize Islamic law with the evolving needs of Muslims, fatwa drafters must master the mechanisms of *ijtihad* and possess deep understanding of both Islamic tradition and contemporary issues.¹⁵ Revisions are only permissible in areas not explicitly regulated by the Qur'an and Hadith. According to Takim, *ijtihad* can involve revisiting Islamic legal provisions in the Qur'an, Hadith, and classical scholars' rulings. This re-evaluation also emphasizes that Islamic legal reform is not solely institutional but also involves reassessing traditional sources and their hermeneutics.¹⁶

This study will analyze the shift in the focus of DSN-MUI fatwas, from solely accommodating Sharia principles in the Qur'an and Hadith to being more adaptive to societal needs. The analysis will examine the evolution of DSN-MUI fatwas related to *tabarru'* contracts, such as Fatwa No. 10/DSN-MUI/IV/2000 on *Wakalah*, Fatwa No. 11/DSN-MUI/IV/2000 on *Kafalah*, Fatwa No. 12/DSN-MUI/IV/2000 on *Hawalah*, and Fatwa No. 23/DSN-MUI/III/2002 on Payment Discounts in *Murabahah*.

This study adopts a qualitative doctrinal and socio-legal methodology with an intensive document-based approach. The primary data consist of selected DSN-MUI fatwas (e.g., Fatwa No. 10/DSN-MUI/IV/2000, No. 11/IV/2000, No. 12/IV/2000, No. 23/III/2002, No. 34/IX/2002, No. 57/V/2007, No. 58/V/2007, No. 113/IX/2017, and No. 153/VI/2022), which were purposively selected due to their relevance to the phenomenon of transforming *tabarru'* contracts into *tijārī* frameworks and the regulation of *muqāṣah*. Secondary data include *uṣūl al-fiqh* literature, contemporary works on *maqāṣid* and *maṣlahah*, and relevant policy documents for triangulation purposes. Data collection techniques comprise systematic archiving, critical reading, and content analysis, while the analytical strategy integrates textual-hermeneutical analysis of the fatwa texts with thematic coding to identify patterns of *uṣūlī* reasoning, *fiqh* maxims (e.g., *al-ashlu fi al-mu'āmalāt al-ibāḥah*), and *maqāṣid/maṣlahah*-based references. This is followed by a comparative-chronological analysis to trace DSN-MUI's methodological shift from textualist interpretation (*tafsīr* literal) toward contextual reasoning. To ensure validity, the findings are corroborated through source triangulation and engagement with both classical and contemporary references. The study acknowledges its limitations particularly its reliance on documentary analysis

¹⁵ Amir Abu Ghudda, "A Sober Second Thought: When and How Should Changes in Islamic Law be Made?", yaqeen institute, 30 Juli 2020. <https://yaqeeninstitute.org/read/paper/v2/a-sober-second-thought-when-and-how-should-changes-in-islamic-law-be-made>

¹⁶ Liyakat Takim, "Revivalism or Reformation: The Reinterpretation of Islamic Law in Modern Times", *The American Journal of Islamic Social Sciences* 25, 3, p. 61-81.

without field surveys and recommends further empirical research to assess the socio-economic impacts of the fatwas.

In Islamic Religious Law, there are aspects that are immutable (unchangeable) and aspects that are mutable (changeable). The immutable aspects of Islamic law pertain to matters of faith (belief in God), fundamental acts of worship, and laws regarding halal (permissible) and haram (prohibited). According to Mansour Nasiri, matters related to divinity are immutable. Both in terms of existence and the mechanisms of worship, these aspects remain absolute as they were when the divine revelation was first delivered by God.¹⁷ The immutability of matters related to divinity and divine revelation, according to Liaquat Ali Khan, serves as the foundation for maintaining the legitimacy and validity of religious law.¹⁸

The mutable aspects of Islamic law, subject to change through *ijtihad* (independent reasoning), include laws related to social transactions (*Muamalah*), fatwas, legal rulings, and public welfare (*maslahah*). Changes in *Muamalah* laws due to *ijtihad* include issues such as women's rights, inheritance, marriage, and governance. Many scholars argue that these laws, although mentioned in the Qur'an and Hadith, are not always absolute and can be adapted to suit societal developments. Such changes are often justified to achieve public welfare or *maslahah*.¹⁹ For example, in the case of inheritance, some modern scholars believe that the rules on inheritance distribution can be adjusted to ensure greater justice in societies that differ from the context of 7th-century Arabia.

Ijtihad is conducted to ensure that Islamic law remains dynamic and applicable to human life. Through *ijtihad*, Islamic law can address various fields and dispel the notion that religious law is rigid and difficult to apply. As human life continues to evolve with the times, the necessity of *ijtihad* in Islamic law becomes increasingly urgent.²⁰

Some modern scholars, such as Fazlur Rahman and Nasr Hamid Abu Zayd, emphasize a contextual approach to these laws. They argue that social laws in the Qur'an and Hadith must be understood within the historical and social contexts of the Prophet Muhammad's era. Consequently, laws emerging from specific contexts can be adapted or reinterpreted for application in different contexts. This approach is especially relevant to issues such as women's rights,

¹⁷ Mansour Nasiri, "Divine Immutability: Perfection or Flaw?", *European Journal of Science and Theology*, Vol. 15, No.3, (2019), p. 1-18.

¹⁸ Liaquat Ali Khan, "The Immutability of Divine Texts", *BYU Law Review, Issue 3, Article 4*, 2008. <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=2413&context=lawreview>

¹⁹ Miftaakhul Amri, "Konsep Maslahat Dalam Penetapan Hukum Islam (Telaah Kritis Pemikiran Hukum Islam Najamuddin At-Thufi)", *Et-Tijarie*, Vol. 5, No. 2, (2018).

²⁰ Said Syaripuddin Abu Baedah dan Zulkifli Wahab, "Ijtihad and the Dynamics of Islamic Law", *Iqra: Jurnal Ilmu Kependidikan dan Keislaman*, Vol. 19, No. 2, (2024).

where the social norms during the Prophet's time may no longer align with modern values of equality.

Within the framework of *Maqasid al-Shariah* (the objectives of Islamic law), changes in social laws are based on broader principles such as justice, welfare, and the protection of human life. Islamic law is not merely a set of technical rules but also aims to achieve moral and ethical objectives. Therefore, if a social rule no longer supports these objectives, it can be revised.

According to Ali Akbar and Abdullah Saeed, many social laws in the Qur'an are flexible or mutable, depending on the time and context. They emphasize that contextual interpretation is essential for applying these laws in modern society, particularly in issues such as human rights, democracy, and gender equality. For instance, scholars like Malekian, Kadivar, and Eshkevari highlight that rules concerning women's rights and political systems should be reinterpreted to make them more relevant to contemporary realities, rather than preserving them in their original form.²¹

Addressing the need for changes in Islamic law requires an ethical framework to manage disagreements and tensions arising from differing opinions among Islamic thinkers. In his writings, Md Yousuf Ali highlights the importance of creating an ethical framework that allows for differences of opinion without causing destructive divisions among Muslims and non-Muslims alike. Such a framework enables the development of Islamic legal changes that meet the needs of its followers.²²

These changes are not limited to Islamic law but also occur in laws governing broader societies. For example, a study by John Tehranian analyzes the shifting concept of race in equality protection laws in the United States. The study examines how the social and legal understanding of race has evolved and its impact on constitutional interpretation.

The findings reveal that race is not a fixed characteristic but can change. The author uses cases such as Rachel Dolezal and Elizabeth Warren to demonstrate how racial identity can be manipulated within legal contexts. This study promotes a more flexible understanding of race in equality protection doctrines, challenging traditional views that consider race immutable. Consequently, the evolving understanding of race can influence legal policies, including affirmative action policies.²³

²¹ Ali Akbar dan Abdullah Saeed. (2018). "Interpretation and Mutability: Socio-legal texts of the Quran; three accounts from Contemporary Iran. *Middle Eastern Studies*.

²² Md Yousuf Ali. "Understanding Change and Changeability: The Ethics of Disagreement in Islamic Thought". *Journal of Academic Perspectives* No.3, (2015)

²³ John Tehranian, "Changing Race: Fluidity, Immutability, and the Evolution of Equal-Protection Jurisprudence", *Journal of Constitutional Law* Vol. 22, 1, (2019).

Principle *Al-Ashlu fi al-Mu'amalati al-Ibahah hatta yaquma al-Dalil ala al-Tahrimiha*

In Islamic law, the principle of "*Al-Ashlu fi al-Mu'amalati al-Ibahah hatta yadulla al-Dalil ala al-Tahrimiha*" is a fundamental rule that asserts all forms of social and economic interactions (*Muamalah*) are essentially permissible unless there is clear evidence prohibiting them. This principle reflects the inclusive and flexible nature of Islamic law, allowing room for innovation and creativity in social life as long as it does not contravene *Shariah* regulations.²⁴ The sources of *Shariah*, including the Qur'an and *Sunnah*, provide a strong legal foundation for applying this principle across various aspects of life.

This principle is derived from the understanding of several Qur'anic verses, such as Surah Al-Baqarah (2:275), which states that trade is permitted while usury (*riba*) is prohibited. This verse implies that economic and trade activities are fundamentally lawful, except where explicitly prohibited elements, such as *riba*, *gharar* (excessive uncertainty), or fraud, are present. Thus, Islamic law grants initial permission for all forms of economic interaction unless they violate *Sharia* principles.

The application of this principle in *Muamalah* is extensive, encompassing various transactions such as trade, business partnerships, leasing, and modern contracts like insurance or investment. For instance, in commerce, the default ruling is permissibility as long as prohibited practices, such as fraud, price manipulation, or exploitation, are absent. This principle grants economic actors the freedom to innovate in business transactions without being confined to traditional forms, provided they adhere to Islamic values.

However, this principle has clear boundaries to prevent misuse. If there is *Sharia* evidence prohibiting a specific form of *Muamalah*, the default ruling of permissibility changes to prohibition. For example, transactions involving *riba*, gambling, or human exploitation are explicitly against *Sharia*, even if they appear outwardly as ordinary *Muamalah*. In such cases, the principle of "*Al-Ashlu fi al-Mu'amalati al-Ibahah*" also emphasizes the importance of ethics and justice in all economic interactions.

Thus, this principle serves as a critical foundation for the development of *Muamalah* law, particularly in addressing the complexities of the modern economy. The flexibility provided by this principle allows Muslims to adapt to changing times without abandoning the core principles of the faith. Simultaneously, it ensures that economic activities remain within the moral and ethical framework defined by Islamic law.

²⁴ Nur Hidayah, Haryatih, and Rihadatul Aisy Kamilah, "Islam and the State: The Evolution of Sharia Banking Regulation in Indonesia," *Mazahib: Jurnal Pemikiran Hukum Islam* 23, no. 2 (2024), p. 727–768.

The Shift from *Tabarru'* Contracts to *Tijari* Contracts

A shift refers to the transition of a provision to a new provision that has not been previously applied. In Islamic contracts, there can be a change in the function or provisions contained within these contracts. Such shifts also occur in the fatwas issued by the DSN-MUI, as seen in the transition of certain charitable contracts (*tabarru'*) into business contracts (*tijari*).

1. *The Transformation of the Wakalah Contract into a Wakalah bil Ujah Contract*

Initially, DSN-MUI Fatwa No. 10/DSN-MUI/IV/2000 concerning *Wakalah* only regulated provisions related to the delegation of authority, offer and acceptance (*ijab and kabul*), and the pillars and conditions of *wakalah*. The fatwa did not specify in detail the fees or compensation (*ujrah*) that Islamic Financial Institutions (IFIs) could receive for services rendered to customers. This fatwa was based on several Islamic legal sources (*nash*), including the Qur'an and Hadith, as well as consensus (*ijma'*). For instance, in Surah Yusuf verse 55, Allah says: "Appoint me over the storehouses of the land; indeed, I will be a knowing guardian." Similarly, in a Hadith narrated by Malik in *Muwaththa'*, it is stated: "The Prophet (peace be upon him) deputized Abu Rafi' and a man from the Ansar to officiate his marriage to Maimunah (RA)."

The permissibility of the *wakalah* contract in Islamic law is based on the Qur'an and Hadith. Surah Yusuf verse 55 illustrates how Prophet Yusuf (AS) requested to become the state treasurer, demonstrating a form of delegation or representation with specific responsibilities and expertise. Likewise, the Hadith narrated by Malik shows that the Prophet (PBUH) authorized individuals to act on his behalf in managing specific tasks, affirming the validity of *wakalah* as a contract in Islam, provided it is conducted with trust and in accordance with Sharia principles.

Two years later, the term *wakalah bil ujah* was introduced in DSN-MUI Fatwa No. 34/DSN-MUI/IX/2002 regarding Sharia Documentary Credit (*Letter of Credit, L/C*). This fatwa stipulated that the amount of *ujrah* must be agreed upon in advance and expressed in nominal terms rather than percentages. Over time, a dedicated fatwa regulating *wakalah bil ujah* was issued DSN-MUI Fatwa No. 113/DSN-MUI/IX/2017 primarily to govern the use of *wakalah bil ujah* contracts in Sharia insurance practices.

The allowance of *ujrah* charges in *tabarru'* contracts (*wakalah*) is guided by several *nash* related to the practice of *wakalah* and the Islamic legal rule: "*Al-aslu fil mu'amalah al-ibaahah*" (the original rule in transactions is permissibility). According to Ibn Qudamah in *Al-Mughni*, the *taukil* (*wakalah*) contract can be performed with or without compensation, as evidenced by the Prophet (PBUH) entrusting tasks to individuals without remuneration in some

instances, while also compensating others for collecting zakat.²⁵ Al-Syaukani, referencing a Hadith from Busr bin Sa'id, stated that individuals who act with the intention of charity (*tabarru'*) in a *wakalah* contract may receive compensation.²⁶ Wahbah al-Zuhaili further equates the permissibility of setting *ujrah* in a *wakalah* contract to the rules governing *ijarah*.²⁷

According to the author, the legal foundation employed by DSN-MUI in shifting the interpretation of the *wakalah* contract from a *tabarru*-based contract to a *tijarah*-based contract through the concept of *wakalah bi al-ujrah* is substantively justifiable from a sharia perspective, whether viewed from textual evidence, *Fiqh* principles, or *maqasid al-Shariah*. This shift should not be understood as an alteration of the original legal nature of the *wakalah* contract, but rather as a contextual and functional expansion of the law known as *tathawwur al-ahkam*.

First, the application of the legal maxim *al-ashlu fil muamalat al-ibahah* constitutes an appropriate foundation. *Wakalah* falls within the domain of *muamalat* rather than pure acts of worship, making legal flexibility its inherent characteristic. As long as there is no explicit textual prohibition against charging *ujrah* in *wakalah*, the provision of remuneration cannot automatically be regarded as a deviation from sharia principles. In this regard, DSN-MUI appears consistent with an adaptive methodology of *Fiqh al-muamalat*.

Second, arguments based on the practice of the Prophet Muhammad SAW, as cited by Ibn Qudamah, indicate that *wakalah* has never been exclusively a purely social contract. Historical evidence that the Prophet SAW appointed agents both with and without compensation suggests that the classification of *wakalah* as *tabarru* or *tijarah* is optional and contingent upon intention, context, and mutual agreement between the parties. Accordingly, *wakalah bi al-ujrah* does not constitute a *bidah* in *muamalat*, but rather represents part of the legal spectrum inherent in the *wakalah* contract itself.

Third, the opinion of al-Shawkani, which permits the acceptance of compensation even when *wakalah* is undertaken with a *tabarru* intention, further reinforces the view that benevolent intent is not nullified by the presence of compensation. From the author's perspective, this distinction is crucial in differentiating between devotional intention and contractual mechanism. Compensation does not inherently negate the ethical value of a contract, provided that it does not involve elements of *gharar*, *riba*, or exploitation.

Fourth, the analogy drawn between *wakalah bi al-ujrah* and the *ijarah* contract, as articulated by Wahbah al-Zuhaili, is also considered relevant. In the context of Islamic financial institutions, *wakalah* is no longer a simple activity

²⁵ Ibn Qudamah, *Al-Mughni*, (Kairo: Dar al-Hadis, Juz 6, 2004), p. 468.

²⁶ Al-Syaukani, *Nail al-Authar*, (Kairo: Dar al-Hadis, Juz 4, 2000), p. 527.

²⁷ Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, (Dimasyq: Dar al-Fikr, Juz 5, 2002), p. 4058.

but a professional service requiring expertise, operational risk management, and legal responsibility. Therefore, treating *wakalah* as a service that merits compensation aligns with the principles of justice *adl* and public interest *maslahah mursalah*.

Nevertheless, the author argues that the primary challenge of *wakalah bi al-ujrah* lies not in its legal permissibility, but in its boundaries. DSN-MUI's stipulation that *ujrah* must be agreed upon in advance and determined as a fixed nominal amount rather than a percentage represents an important safeguard against the disguise of *riba* and speculative practices. Without such limitations, *wakalah* risks shifting from a service-based contract into an illegitimate profit-oriented instrument grounded in risk-taking that is inconsistent with sharia principles.

In conclusion, the author maintains that the legal framework of *wakalah bi al-ujrah* formulated by DSN-MUI reflects a moderate form of collective *ijtihad*, one that preserves continuity with the classical *Fiqh* tradition while simultaneously addressing the needs of modern Islamic financial institutions. The transition from *tabarru* to *tijarah* in this context should not be viewed as the commercialization of religion, but rather as a rationalization of sharia contracts to ensure their operational viability, sustainability, and overall benefit.

2. The Transformation of the Hawalah Contract into a Hawalah bil Ujrah Contract

The shift from *tabarru'* to *tijari* contracts is also evident in *hawalah*. Initially, as a charitable contract, *hawalah* did not involve payment for services rendered. DSN-MUI Fatwa No. 12 did not include provisions for *ujrah* or compensation within *hawalah* contracts, focusing instead on general clauses such as party requirements, offer and acceptance (*ijab* and *kabul*), and written contractual obligations.

The legal basis for this fatwa included Hadiths, such as one narrated by Bukhari and Abu Hurairah: "*Delaying debt repayment by someone able to pay is an injustice. If one of you is referred to a capable debtor (through hawalah), then accept it.*" Another Hadith from Tirmidhi states: "*Reconciliation can be made among Muslims except for reconciliation that permits what is unlawful or prohibits what is lawful, and Muslims are bound by their conditions unless they contradict Sharia.*"

Seven years later, DSN-MUI Fatwa No. 58/DSN-MUI/V/2007 permitted the recipient of transferred debt (*muhal alaih*) to receive *ujrah* or compensation in a *hawalah* contract. The fatwa specified that *ujrah* could only be imposed in *hawalah muthlaqah* (where the debtor does not owe the *muhal alaih*).

The imposition of *ujrah* (fees) in *hawalah* contracts by the DSN-MUI is based on the opinion of the scholar Mushtafa 'Abdullah al-Hamsyari as cited by

Sheikh ‘Athiyah Shaqr.²⁸ According to Mushthafa, the mechanism of a bank's Letter of Credit (L/C) can include fees as compensation for issuing the L/C. This permissibility is supported by several contractual mechanisms, one of which is the *hawalah* contract. Based on this provision, it is understood that in the *hawalah* contract, it is permissible to charge fees or *ujrah* during its implementation.

According to the author, the permissibility of applying *ujrah* in the *hawalah* contract as promulgated by DSN-MUI constitutes a form of contemporary *ijtihad* that is pragmatic while remaining within *Shariah* parameters. The shift in the character of *hawalah* from a *tabarru* based contract to a *tijarah* based contract cannot be separated from the changing function of the contract in modern financial practice, particularly in Islamic banking.

Classically, *hawalah* is understood as an act of mutual assistance in the transfer of debt and is therefore ideally categorized as *tabarru*. However, in modern financial practice, especially within the mechanics of the Letter of Credit L/C, *hawalah* no longer operates solely as an individual social act; it becomes an institutional financial service that entails reputational risk, legal exposure, and liquidity commitments by the *muhalah*. In this context, the author regards it as reasonable for *hawalah* to carry a compensatory fee in the form of *ujrah*.

DSN-MUI's reliance on the view of Mushthafa Abdullah al-Hamsyari, who permits a bank to receive remuneration for handling L/C mechanisms partly grounded in *hawalah*, indicates that *hawalah bi al-ujrah* should be seen within a multi-contract or hybrid contract framework. The author contends that *ujrah* in *hawalah* is not compensation for the debt itself but for the service of transferring, managing, and guaranteeing payment commitments; therefore it cannot be classified as *riba*.

DSN-MUI's restriction that *ujrah* may only be charged for *hawalah muthlaqah* is also deemed appropriate from a *Shariah* perspective. In *hawalah muqayyadah* there is a reciprocal debt relationship between the *muhil* and the *muhalah*, so imposing *ujrah* risks creating *ziyadah ala al-dayn*, an addition to the debt that is prohibited. By contrast, in *hawalah muthlaqah* the *muhalah* has no preexisting debt obligation, so any compensation received is better understood as a service fee rather than an augmentation of the debt.

The author further views DSN-MUI's requirement that *ujrah* be specified clearly at the contract outset as a crucial safeguard for the integrity of the contract. Clarity regarding *ujrah* functions as a deterrent to *gharar* and affirms that *hawalah bi al-ujrah* is a *tijarah* contract characterized by transparency and voluntary consent *taradhi*.

In sum, the author concludes that the legal basis for *hawalah bi al-ujrah* as formulated by DSN-MUI reflects a balanced approach between classical *Fiqh*

²⁸ Al-'Allamah al-Syaikh 'Athiyah Shaqr, *Ahsan al-Kalam fi al-Fatawa wa al-Ahkam/Fatawa Syaikh Athiyah Saqr*, (Mesir: Maktabah al-Taufiqiyah, Juz 5), p. 542-543.

texts and contemporary economic needs. The transformation of *hawalah* from a *tabarru* contract into a *tijarah* contract is not a legal deviation but a legitimate functional reclassification under *Shariah*, provided that *ujrah* is not linked to the amount of the debt, does not unduly burden the parties, and does not open the door to covert *riba* practices.

3. The Transformation of the Kafalah Contract into a Kafalah bil Ujrah Contract

Furthermore, a shift from *tabarru'* (benevolent) contracts to *tijari* (commercial) contracts also occurs in *kafalah* contracts. A *kafalah* contract is a guarantee provided by a guarantor (*kafil*) to a third party to fulfill the obligations of the second party or principal debtor (*makful 'anhu ashil*). The provisions related to *kafalah* contracts are outlined in DSN-MUI Fatwa No. 11/DSN-MUI/IV/2000 concerning *Kafalah*. This fatwa is based on several textual sources (Qur'an and Hadith), such as QS. Yusuf (12:72): "The heralds announced, 'We are missing the king's cup, and whoever returns it will receive a camel-load of provisions, and I guarantee it.'" Another source is a hadith narrated by Bukhari from Salamah bin Akwa': "A deceased man was brought to the Prophet (peace be upon him) for the funeral prayer. The Prophet asked, 'Does he have any debt?' The companions replied, 'No.' So he prayed for him. Another deceased man was brought, and the Prophet asked, 'Does he have any debt?' The companions replied, 'Yes.' The Prophet said, 'Pray for your companion (as I will not).' Then Abu Qatadah said, 'I guarantee his debt, O Messenger of Allah.' So the Prophet prayed for him."

Based on these two sources, it is evident that *kafalah* is a guarantee contract intended to assist someone in difficulty, particularly in fulfilling obligations they cannot meet independently. This is reflected in QS. Yusuf (12:72), where the act of guaranteeing is undertaken to retrieve a lost item with a promise of reward, showing an effort to help those in need. Similarly, in the hadith narrated by Bukhari, when the Prophet (peace be upon him) refused to perform the funeral prayer for a deceased person with unpaid debts, but Abu Qatadah's willingness to guarantee the debt prompted the Prophet to lead the prayer. This indicates that *kafalah* is not merely a transaction but also a form of assistance to individuals in difficulty, providing a guarantee so their obligations can be fulfilled.

Unlike the two previous contracts, the DSN-MUI explicitly permits the imposition of fees or *ujrah* in the Fatwa concerning *Kafalah* in general. According to the fatwa, the guarantor may receive compensation as long as it does not burden the guaranteed party. Based on this provision, the DSN-MUI has yet to issue a specific fatwa regulating *Kafalah bil Ujrah*, as has been done with *Wakalah bil Ujrah* and *Hawalah bil Ujrah*.

The term *Kafalah bil Ujrah* first appeared in DSN-MUI Fatwa No. 57/DSN-MUI/V/2007 concerning Letters of Credit (L/C) with *Kafalah bil Ujrah*

contracts. An L/C with a *Kafalah bil Ujrah* contract is a guarantee provided by Islamic financial institutions (LKS) for export-import trade transactions conducted by customers based on a *kafalah* contract. For this guarantee service, LKS can charge a fee that must be agreed upon beforehand and included in the contract.

The permissibility of applying *ujrah* in *kafalah* contracts is also based on the opinion of Mushthafa ‘Abdullah al-Hamsyari as cited by Sheikh ‘Athiyah Shaqr. The application of *ujrah* in *kafalah* contracts is permitted as one of the underlying contracts for the implementation of Letters of Credit and Bank Guarantees. In his view, the *kafalah* contract with *ujrah* is based on compensation for *jah* (dignity and prestige) services, which, according to the Shafi'i school of thought, is lawful (*jawaz*). Mushthafa al-Hamsyari also links the permissibility of *ujrah* in *kafalah* contracts to the practice of *ju'alah*, which is also allowed by the Shafi'i school of thought.

According to the author, the legal foundation employed by DSN-MUI in permitting the application of *ujrah* to the *kafalah* contract reflects an *ijtihad* approach that is evolutionary and contextual, yet firmly rooted in the classical *Fiqh* tradition. DSN-MUI does not treat *kafalah* bi al-*ujrah* as an entirely new and independent contract, but rather as a functional development of the classical *kafalah* contract adapted to the needs of modern financial transactions, particularly in the practice of Letters of Credit (L/C) and Islamic bank guarantees.

The author considers DSN-MUI's reference to the opinion of Mushthafa Abdullah al-Hamsyari to be methodologically robust, as the underlying argument does not contradict the fundamental nature of *kafalah* as a guarantee contract. The interpretation that *ujrah* constitutes remuneration for the service of *jah* that is, the guarantor's standing, reputation, and authority is acceptable from a *Fiqh* perspective, especially in the context of Islamic financial institutions that place their institutional reputation, financial capacity, and legal responsibility at stake when providing guarantees to third parties.

Furthermore, the linkage of *kafalah* bi al-*ujrah* to the *ju'alah* contract, as permitted within the Shafi'i school of law, demonstrates DSN-MUI's effort to identify a *Fiqh* justification that most closely aligns with the characteristics of modern guarantee services. In the author's view, this approach reflects an awareness that guarantees issued by financial institutions are not merely acts of social benevolence, but professional activities involving risk, operational costs, and managerial expertise, and therefore are rationally deserving of compensation.

Nevertheless, the author argues that the permissibility of *kafalah* bi al-*ujrah* must be understood in a limited and cautious manner. *Kafalah* is fundamentally grounded in the spirit of *ta'awun*, or mutual assistance, and the imposition of *ujrah* must not undermine the protective character of the contract. Accordingly, DSN-MUI's stipulation that *ujrah* must not impose an excessive burden on the guaranteed party constitutes a crucial safeguard against the

transformation of *kafalah* into a purely commercial instrument that could give rise to injustice.

Moreover, the author maintains that the change in the status of *kafalah* from a *tabarru*-based contract to a *tijarah*-based contract through an explicit agreement on *ujrah* does not represent a legal deviation, but rather a legitimate form of *takyif Fiqhi*, or juristic classification. As long as *ujrah* is positioned as compensation for guarantee services rather than as an addition to the principal debt or as consideration for deferred payment, the *kafalah bi al-ujrah* contract remains protected from elements of *riba* and *gharar*.

In conclusion, the author asserts that the legal basis of *kafalah bi al-ujrah* as articulated in DSN-MUI fatwas is both sharia-compliant and methodologically sound, provided that its implementation is governed by principles of justice, transparency, and the protection of the guaranteed party. This transformation reflects an effort within Islamic law to remain relevant and operational within the modern financial system without sacrificing its normative values.

The shift of several types of *tabarru'* contracts to *tijari* contracts was undertaken to accommodate the interests of Islamic financial institutions (LKS) as profit-oriented entities. *Tabarru'* contracts that have shifted to *tijari* include *wakalah*, *hawalah*, and *kafalah* contracts. This demonstrates that the business world significantly influences fatwa development. The need for LKS to generate service revenue and the impossibility of utilizing these three contracts voluntarily are also considerations for the DSN-MUI in shifting these contract types.

The use of the legal principles of *maslahah mursalah* and the *Fiqh Muamalah* rule "*al-Ashlu fil Muamalah al-ibahah*" is highly relevant in the context of transforming *tabarru'* contracts into *tijari* contracts. *Maslahah mursalah*, which considers the general benefit in legal decisions, supports this change, taking into account the need for Islamic financial institutions to operate efficiently and profitably. As entities required to fulfill economic and social objectives, LKS need legal instruments that enable them to earn service fees without violating sharia principles. According to Nur Hidayah, the method of formulating the law of *maslahah* is frequently used in the issuance of DSN-MUI fatwas because most guidelines are related to new cases not found in the *nash* or *ijma' ulama*.²⁹

On the other hand, the rule "*al-Ashlu fil Muamalah al-ibahah*" teaches that in worldly matters (*Muamalah*), the original ruling is permissibility unless there is evidence prohibiting it. Under this principle, changing contracts from being oriented toward *tabarru'* (voluntary) to *tijari* (profit-oriented) is deemed lawful as long as it does not violate fundamental sharia principles. Consequently,

²⁹ Nur Hidayah, *Fatwa-Fatwa Dewan Syariah Nasional Atas Aspek Hukum Islam Perbankan Syariah di Indonesia*. (Banten: Pusat Penelitian dan Penerbitan (Puslitpen) Lembaga Penelitian dan Pengabdian kepada Masyarakat (LP2M) UIN Syarif Hidayatullah Jakarta.

applying contracts such as *wakalah*, *hawalah*, and *kafalah* in the context of Islamic financial institutions is not only permissible but also considered necessary to maintain the sustainability and development of the sharia financial sector in line with contemporary demands.

Efforts to accommodate the needs of LKS to earn income from fees imposed on the above-mentioned *tabarru'* contracts indirectly encourage LKS to provide the best services to customers. As a result of this adaptation, aside from directly favoring LKS, these shifts also indirectly demonstrate a preference for customers utilizing LKS services.

Shifting the Obligation to Provide Discounts on Financing Installments in *Murabahah* Contracts

The *bai' al-murabahah* contract is a sales agreement in which the seller discloses the purchase price of a commodity to the buyer, and the buyer agrees to pay a higher price as a profit margin. The sale can be conducted in cash, in installments, or, under certain conditions, through agreed-upon debt cancellation. However, payments in *murabahah* contracts at Islamic Financial Institutions (IFIs) are generally made in installments over a period mutually agreed upon by the IFI and the customer. During the installment period, customers may sometimes make payments on time or earlier than scheduled.

Often, IFIs are requested to provide discounts on the total payment obligations. To address this issue, the DSN-MUI issued Fatwa No. 23/DSN-MUI/III/2002 on Discounts for Early Settlement in *Murabahah*, which states: "*If a customer in a murabahah transaction makes full payment either on time or earlier than scheduled, the IFI may provide a discount on the payment obligations, provided this is not agreed upon in the contract.*" The amount of discount provided by the IFI is left to its discretion and consideration.

The permissibility of granting discounts on *murabahah* financing installments is based on a Hadith of Prophet Muhammad (peace be upon him), narrated by Ibn Abbas, where he instructed the expulsion of Banu Nadhir. Some of them approached him, saying, "O Prophet of Allah, you have ordered our expulsion while we have debts that are not yet due." The Prophet (peace be upon him) said: "*Grant them relief and hasten the collection.*"

From this Hadith, it can be understood that granting a discount to a debtor who accelerates the repayment of their debt is permissible in Islam. This demonstrates flexibility in financial transactions, as long as such actions do not involve *riba* and adhere to principles of justice.

However, after the issuance of this fatwa, some IFIs provided discounts to customers who made early payments, while others did not. This led to disputes between customers and IFIs regarding the early settlement of *murabahah* financing debts, one of which was resolved through DSN-MUI. Based on these

circumstances, DSN-MUI issued an updated fatwa, namely Fatwa No. 153/DSN-MUI/VI/2022 on Early Settlement of *Murabahah* Financing Debts. This fatwa stipulates that if a customer settles a debt before its due date, the IFI, as the seller, is obligated to provide a discount on the *qimah ismiyyah* (nominal price).

The *ijtihad* of the fatwa's drafters is based on contemporary scholars' opinions, which discuss the relationship between the payment period and the price of goods. The term "discount" or price reduction in Arabic is referred to as "*muqasah*," meaning a reduction. In this context, *muqasah* is defined as granting a discount or relief on the profit margin obtained by the IFI for financing under a *murabahah* contract.

The provisions regarding *muqasah* are permitted by the Prophet Muhammad (peace be upon him) through a Hadith narrated by At-Thabrani in *Al-Kabir* and Al-Hakim in *Al-Mustadrak*, which explains that the Prophet (peace be upon him) ordered the expulsion of Banu Nadhir. Some of them approached him, saying, "O Messenger of Allah, you have ordered our expulsion while we have debts owed by others that are not yet due." The Prophet (peace be upon him) responded, "Grant them relief and expedite the collection."

The discount provided by IFIs is interpreted as a form of appreciation for the cooperation between the IFI and the customer, acknowledging the customer's goodwill in fulfilling their obligations. If a customer wishes to settle installments early, Islamic banks are required to provide a reduction in the margin, as stipulated in DSN-MUI Fatwa No. 153/DSN-MUI/VI/2022.

According to the Financial Accounting Standards Statement (PSAK) 102, there are two methods for granting early settlement discounts:

1. The discount is granted at the time of settlement by reducing the receivables and profit from the *murabahah* transaction.
2. The discount is granted after the payment is made by first receiving the payment from the customer and then providing the early settlement discount.

Based on this updated fatwa, there has been a shift in focus among the drafters of fatwas in line with the evolution of Islamic economic and financial practices in Indonesia. During the early period of fatwa issuance, the DSN-MUI tended to accommodate only the general framework of Sharia provisions according to texts and scholars' *ijtihad*, which could then be applied to IFI products. Over time, the drafters have also considered the reputation of IFIs by maintaining public interest in Islamic financial products.

One effort is requiring IFIs to offer price discounts on *murabahah* objects for customers who make early payments. Through this updated fatwa, the drafters clearly show their support for customers who diligently fulfill their obligations. Additionally, this updated fatwa indirectly supports IFIs, as the promise of installment discounts encourages customers to settle debts more quickly, allowing IFIs to manage their funds more efficiently.

***Fiqh Muamalah* Review on the Shift of Focus in the DSN-MUI Fatwa**

Shariah and *Fiqh* are two fundamental concepts in Islamic law. *Shariah* literally means the path to a water source or the right way of life and refers to the divine law revealed by Allah through the Qur'an and the Sunnah.³⁰ *Fiqh*, by contrast, is the scholars' effort to understand and translate those *Shariah* principles into concrete rules for everyday life.³¹ In other words, *Shariah* is fixed and divine, whereas *Fiqh*, as human *ijtihad*, is flexible and may change with the times. For example, ritual obligations such as prayer, zakat, fasting, and pilgrimage belong to *Shariah*'s permanent corpus, while the interpretation and practical implementation of those obligations through *Fiqh* can adapt to different social and cultural contexts.

Fiqh Muamalah governs social and economic relations among people, *hablum minannas*, covering transactions such as buying and selling, finance, contracts, inheritance, lease, and so on.³² Its aim is to ensure justice and *Shariah* compliance in economic activity, for instance by avoiding *riba* (interest), *gharar* (excessive uncertainty), and *maysir* (speculation).³³ One principal maxim of *Fiqh Muamalah* is *al-ashlu fil Muamalah al-ibahah*, namely that, in principle, all forms of *Muamalah* are permissible provided there is no evidence prohibiting them. This principle allows Muslims to innovate in economic transactions so long as they do not contradict the core tenets of *Shariah*. In addition, *Fiqh Muamalah* follows the maxim *al-muhafazhah bil qadim al-salih wal akhdz bi al-jadid al-aslah*, meaning preserve the old practices that are still good and adopt new ones provided they are not forbidden. Immutable rules, *ats-tsawabit*, such as the prohibitions on *riba*, *gharar*, and *maysir*, constitute foundational principles that must not be violated in any *Muamalah* transaction.

On this basis the concepts of *ats-tsawabit* (unchanging principles) and *al-mutaghayyirat* (changeable provisions) arise within *Fiqh Muamalah*.³⁴ *Ats-tsawabit* encompass *Shariah* principles that are perpetual, such as justice, honesty, balance, and the protection of the weak. By contrast, *al-mutaghayyirat* denotes the contextual rules of *Fiqh* that may change according to time, place, and socio-economic needs. Following the maxim *taghyir al-ahkam bi taghyir al-azmin wa al-amkan*, that legal rulings change with changes in time and place, *Shariah* remains relevant and contextual without sacrificing its essence.

³⁰ Al-Rāghib al-Isfahānī. *Al-Mufradāt fī Gharīb al-Qur'ān*. Beirut: Dār al-Qalam.

³¹ Al-Ghazālī, Abū Ḥāmid. (1997). *Al-Mustasfā min 'Ilm al-Uṣūl*. Beirut: Dār al-Kutub al-'Ilmiyyah.

³² Wahbah al-Zuhayli, *Al-Fiqh al-Islami wa Adillatuh*, vol. 4 (Damascus: Dār al-Fikr, 1985).

³³ M. Maksun & N. Hidayah, "The Mechanism of Avoiding Riba in Islamic Financial Institutions: Experiences of Indonesia and Malaysia", *JURIS: Jurnal Ilmiah Syariah* 22, no. 2 (2023), p. 235–244.

³⁴ Yūsuf al-Qaradāwī, *Fiqh al-Awlawiyyāt* (Cairo: Dār al-Shurūq, 1995), p. 45–50.

A classic example illustrating the separation between *tsawabit* and *mutaghayyirat* is Imam al-Shafi'i's shift from an earlier opinion to a later one.³⁵ Initially in Baghdad he required *zakat al-fitr* to be given only in staple foodstuffs, reflecting local circumstances at that time. After relocating to Egypt, Imam al-Shafi'i permitted *zakat al-fitr* to be paid in money due to Egypt's more complex economic conditions, while the fundamental purpose of *zakat* remained intact. This change does not abandon *Shariah* principles but rather adapts their application to local needs.

Tsawabit are reflected in evidences and fundamental principles that do not change.³⁶ For example, the existence of contracts such as *wakalah*, *hawalah*, and *kafalah* is supported by scriptural texts (Qur'an Yusuf:55 and hadiths about appointment of agents and debt transfer) and therefore their legality is established. The Qur'anic command to fulfil agreements (Qur'an al-Ma'idah [5]:1) also functions as a *tsawabit* foundation for contractual obligations. *Fiqh* maxims such as *al-ashlu fi al-muamalat al-ibahah* are likewise *tsawabit* that permit diverse transactions absent a specific textual prohibition. Similarly, the objective of contracts to help others, *tabarru'* in the *Muamalah* framework, is a constant *Shariah* principle. In other words, the basic framework of contracts and their juristic conditions (for example definitions of *wakalah* and the elements of a contract) remain unchanged.

Meanwhile, *mutaghayyirat* become visible in changes or developments to the operational provisions of contracts to meet contemporary needs.³⁷ The shift of *wakalah*, *hawalah*, and *kafalah* from *tabarru'* patterns (without remuneration) to *tijari* patterns (with remuneration) exemplifies *mutaghayyirat*. Early DSN-MUI fatwas (Fatwa No.10/2000, 12/2000) did not recognize the concepts of *wakalah bil-ujrah* or *hawalah bil-ujrah* and generally did not provide for *ujrah* fees. Later, however, DSN-MUI issued specific fatwas (*Wakalah bil-Ujrah* No.113/2017; *Hawalah bil-Ujrah* No.58/2007; *Kafalah bil-Ujrah* No.57/2007) that permitted or required compensation in those contracts. These changes were judicial *ijtihad* responses to the needs of Islamic financial institutions so they could provide agency services while receiving remuneration appropriate to business demands. In other words, the introduction of *ujrah* or new fees in *wakalah*, *hawalah*, and *kafalah* constitutes *mutaghayyirat*, because these contracts were originally idealized as acts of mutual assistance without compensation but have since been adjusted toward commercial forms.

³⁵ Al-Nawawī, Yaḥyā ibn Sharaf. *Al-Majmū' Sharḥ al-Muḥadhdhab*, vol. 1 (Beirut: Dār al-Fikr, n.d.), p. 63–65.

³⁶ Al-Shāṭibī, Ibrāhīm ibn Mūsā. *Al-Muwāfaqāt*, vol. 2 (Cairo: Dār Ibn 'Affān, 1997), p. 302–305.

³⁷ Yūsuf al-Qaradāwī, *Madkhal li Dirāsāt al-Sharī'ah al-Islāmiyyah* (Cairo: Maktabah Wahbah, 2001), p. 125–132.

A similar development occurred in *murabahah* contracts regarding *muqasah*, early prophetic guidance encouraged leniency for early repayment, and initially DSN allowed banks to grant discounts only if not contractually stipulated (Fatwa No.23/2002). The more recent DSN Fatwa No.153/2022 makes granting a discount obligatory when a customer repays before maturity. This is an instance of *mutaghayyirat* because the fatwa imposes a new technical provision (mandatory discount) that was not previously required. Thus the technical pricing mechanism of *murabahah* has been adapted through contemporary *ijtihad* even though the core condition of *murabahah* as a sale with a fixed profit margin, as a *tsawabit*, remains unchanged.

Analysis of these fatwa evolutions shows that DSN-MUI tends to accommodate the needs of Islamic financial institutions while protecting customers. In many fatwas DSN-MUI invokes *maslahah mursalah* and the maxim *al-ashlu fi al-muamalat al-ibahah* to permit innovations such as *wakalah bil-ujrah* and *kafalah bil-ujrah* as responses to economic realities. DSN judges that the benefit of stabilizing the Islamic financial system outweighs the restrictions on these new practices. At the same time, DSN ensures that customers are not unfairly burdened; for example, although banks may be obliged to grant discounts, the amount of reduction is calculated fairly based on the remaining sale price. In sum, the shift of contracts from *tabarru'* to *tijari* reflects DSN's pragmatic stance: supporting Islamic financial institutions in obtaining remuneration for services within *Shariah* boundaries so that services remain sustainable, while striving to safeguard the public interest through measures such as price reductions as part of a living *Muamalah* ethos.

Conclusion

Based on the explanation above this study demonstrates that the maxim *al-ashlu fil mu'amalāt al-ibāhah* functions as a foundational hermeneutic that permits innovation within Islamic commercial practice so long as explicit textual prohibitions are absent. From this premise arises a coherent analytical framework distinguishing between *ats-tsawābit* (permanent, scripturally grounded principles such as the prohibitions of *riba*, *gharar*, and *maysir*) and *al-mutaghayyirāt* (contextual, operational provisions that may legitimately evolve in response to changing social and economic realities). Empirically, the evolution of DSN-MUI fatwas most notably the progressive recognition of *wakālah bil-ujrah*, *hawālah bil-ujrah*, *kafālah bil-ujrah*, and the shift toward obligatory *muqāsah* in early *murābahah* settlement illustrates how contemporary *ijtihad* attempts to reconcile classical *fiqh* with the exigencies of modern Islamic financial intermediation. These developments are methodologically justified within the paper by appeals to *maqāṣid*, *maslahah mursalah*, and established *fiqh* maxims; they also incorporate procedural safeguards (e.g., pre-agreement of *ujrah*, nominal rather than percentage fees, protection against *ziyādah 'alā al-dayn*) intended to prevent *riba*,

excessive *gharar*, or unjust burdening of clients. The findings indicate that DSN-MUI's approach is pragmatic and moderate: it preserves core *Sharī'ah* principles while enabling Islamic financial institutions to operate sustainably. At the same time, the study underscores the importance of clear doctrinal limits and transparent contractual practices to prevent functional drift from service remuneration into impermissible commercialization. Policy-wise, the paper recommends continued vigilance in fatwa formulation emphasizing explicit contractual terms, consumer protection mechanisms, and regular review of institutional practice to ensure that adaptive *fiqh* remains faithful to its normative foundations. Future research should empirically assess the socio-economic impacts of these fatwa changes on both financial institutions and consumers to inform balanced, evidence-based *ijtihad*.

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