

## METHODOLOGICAL PROCEDURE FOR DETERMINING THE FATWA OF THE NATIONAL SHARIA COUNCIL (DSN) INDONESIAN ULAMA MAJELIS (MUI) CONCERNING ISLAMIC ECONOMICS AND FINANCE

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### Abstract

*Religious fatwas related to sharia economics and finance have great urgency and benefits for sharia economic and financial actors. The Qur'an and Hadith require detailed and analytical interpretation to explain the problems that arise, especially regarding zanni propositions. Fatwas issued by Islamic religious experts play an important role in responding to contemporary problems in accordance with social, scientific and technological developments. This research uses a normative legal approach with library research methods. This approach includes a study of the DSN-MUI Manhaj al-Ifta procedures and Manhaj al-Ifta which are the basis for determining fatwas related to sharia economic and financial issues. The DSN-MUI fatwa must comply with correct procedures and methodology (Al-Manhaj), avoid excessive (Ifrathi) and reckless (Tafrihi), and follow two main approaches: gradual (Tadriji) and voluntary (Tathawwu'i), and use a fiqh that provides solutions (Makharij Al-Fiqhiyyah). The principles of Manhaj Al-Ifta DSN-MUI include Taysir Al-Manhaj, Tafriq Al-Halal 'an Al-Haram, I'adat Al-Nazhar, and Tahqiq Al-Manath. Taysir Al-Manhaj emphasizes ease within the limits of legal rules, while Tafriq Al-Halal 'an Al-Haram separates the halal from the haram. I'adat Al-Nazhar revises the views of previous scholars which are no longer relevant, and Tahqiq Al-Manath emphasizes the analysis of the causes ('Illah) of law in a changing context. The DSN-MUI fatwa was made through Ijtihad Jama'i which involved various ulama and experts from various fields to ensure the honesty and truth of the fatwa. In this way, the DSN-MUI fatwa can meet the needs of sharia economic actors, provide solutions, and remain based on strong sharia.*  
*Keywords: Methodological Procedure, Fatwa, DSN*

### Abstrak

*Fatwa agama terkait ekonomi dan keuangan syariah memiliki urgensi dan manfaat besar bagi pelaku ekonomi dan keuangan syariah. Al-Qur'an dan Hadis memerlukan interpretasi terperinci dan analitis untuk menjelaskan masalah yang muncul, terutama terkait dalil yang bersifat zanni. Fatwa yang dikeluarkan oleh ahli agama Islam memainkan peran penting dalam menjawab permasalahan kontemporer sesuai dengan*

*perkembangan sosial, ilmu pengetahuan, dan teknologi. Penelitian ini menggunakan pendekatan hukum normatif dengan metode penelitian kepustakaan. Pendekatan ini mencakup kajian terhadap prosedur dan Manhaj al-Ifta DSN-MUI yang menjadi dasar dalam menetapkan fatwa terkait isu ekonomi dan keuangan syariah. Fatwa DSN-MUI harus memenuhi prosedur dan metodologi (Al-Manhaj) yang benar, menghindari sikap berlebihan (Ifrathi) dan sembrono (Tafrihi), serta mengikuti dua pendekatan utama: bertahap (Tadriji) dan sukarela (Tathawwu'i), serta menggunakan pendekatan fiqih yang memberikan solusi (Makharij Al-Fiqhiyyah). Prinsip-prinsip Manhaj Al-Ifta DSN-MUI meliputi Taysir Al-Manhaj, Tafriq Al-Halal 'an Al-Haram, I'adat Al-Nazhar, dan Tahqiq Al-Manath. Taysir Al-Manhaj menekankan kemudahan dalam batasan aturan hukum, sementara Tafriq Al-Halal 'an Al-Haram memisahkan yang halal dari yang haram. I'adat Al-Nazhar merevisi pandangan ulama terdahulu yang tidak lagi relevan, dan Tahqiq Al-Manath menekankan analisis sebab ('illah) hukum dalam konteks yang berubah. Fatwa DSN-MUI dibuat melalui Ijtihad Jama'i yang melibatkan berbagai ulama dan ahli dari berbagai bidang untuk memastikan kejujuran dan kebenaran fatwa. Dengan demikian, fatwa DSN-MUI dapat memenuhi kebutuhan pelaku ekonomi syariah, memberikan solusi, dan tetap berlandaskan pada syariah yang kuat.*

*Kata Kunci: Prosedur Metodologis, Fatwa, DSN*



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## INTRODUCTION

Religious fatwas related to Sharia economics and finance have enormous urgency and benefits, especially for sharia economic and financial actors.<sup>1</sup> This is because the Qur'an and al-Hadith as sources of behavior, attitudes and actions are still global in nature,<sup>2</sup> so it requires detailed and analytical interpretation, so that Muslims know the real problem. The two legacies of the Prophet SAW, namely the Qur'an and al-Hadith, require detailed explanation when they come into contact with actual problems that arise, especially verses/dalils that are of a zanni nature.<sup>3</sup> Regarding the issue of qath'i arguments, there are two well-known opinions.<sup>4</sup> The first opinion is that the qath'i arguments do not need a detailed and detailed explanation. The second opinion states that qath'i arguments also require in-depth explanation and analysis. As long as it does not deviate from the rules of interpretation and takwil-tawil that have been determined by the applicable rules. These reasons can be justified considering that Muslims in general do not know in depth the contents of the Koran and al-Hadith. In this context, fatwas have an important role because they are the result of decisions by Islamic religious experts in issuing legal decisions

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<sup>1</sup> Mohammad Fateh, "Konstruksi Filosofis Fatwa DSN-MUI," *Jurnal Hukum Islam* 16, no. 2 (2018): 155–71.

<sup>2</sup> Septi Aji Fitra Jaya, "Al-Qur'an Dan Hadis Sebagai Sumber Hukum Islam," *Jurnal Indo-Islamika* 9, no. 2 (2019): 204–16.

<sup>3</sup> *Ilm Ushul Al-Fiqh* (Kairo: Maktabah Al-Da'wah Al-Islamiyah, t.t.), 35.

<sup>4</sup> Fateh, "Konstruksi Filosofis Fatwa DSN-MUI."

responsibly and consistently.<sup>5</sup>

Fatwa must always be up to date following current developments.<sup>6</sup> Therefore, the fatwa must pay attention to things, namely, first, social change. This includes contemporary cultural, economic and political changes which require Islamic legal experts to carry out a re-examination (I'adat al-nazhar) of the opinions of previous scholars which are no longer appropriate to the current social context. Second, the development of science and technology, this greatly influences efforts to find stronger opinions among the opinions that developed in classical jurisprudence, where in the classical era science and technology had not developed as rapidly as they do today.<sup>7</sup> With the help of science and technology, Fuqaha can re-examine the provisions of old laws that have become discourses in the Middle Ages to contextualize them with contemporary conditions which are much more complex. At this time, determining a stronger opinion is not only based on textual arguments with a deductive approach, or even just a school of jurisprudence approach, but must also pay attention to its relevance to changes in society. Third, the demands of contemporary developments require Fuqaha to see the complexity of contemporary problems<sup>8</sup> and choose legal views and fatwas that make it easier (al-taysir) and avoid difficulties (al-haraj) in furu' or branch laws, especially muamalah issues which are included in it related to the very rapid development of Sharia economics and finance.<sup>9</sup> Fourth, the emergence of new cases requires new ijtihad because these problems have never been answered by classical Fuqaha.<sup>10</sup>

Fatwas on Sharia economics and finance are the result of reading from social reality, because Islam as a guideline for acting and behaving was born in the midst of the dynamics of struggles in people's lives as a solution to actual problems that arise. Society's problems always develop and change along with the development and changes of society itself. Thus, fatwas on sharia economics and finance will also develop and change in line with developments and changes in the time and space that surrounds them. This is the relevance of Islamic teachings

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<sup>5</sup> Rohadi Abdul Fatah, *Analisis Fatwa Keagamaan Dalam Fikih Islam* (Jakarta: Bumi Aksara, 2010), 27.

<sup>6</sup> Lisa Ikhsana dan Eka Imroatun Khasanah, "The Role of the Indonesian Ulema Council in Establishing Fatwas as a Method of Ijtihad in the Contemporary Era," *Jurnal Scientia Indonesia* 6, no. 2 (2020): 207–24.

<sup>7</sup> Salman Yoga, "Perubahan Sosial Budaya Masyarakat Indonesia Dan Perkembangan Teknologi Komunikasi," *Jurnal Al-Bayan: Media Kajian dan Pengembangan Ilmu Dakwah* 24, no. 1 (2019), <https://jurnal.ar-raniry.ac.id/index.php/bayan/article/view/3175>.

<sup>8</sup> Rizqi Suprayogi, "Reformasi Hukum Perkawinan Islam Di Indonesia," *Indonesia Journal of Business Law* 2, no. 1 (2023): 29–37.

<sup>9</sup> Nur Asiyah dan Abdul Ghofur, "Kontribusi Metode Maṣlaḥah Mursalah Imam Malik Terhadap Pengembangan Hukum Ekonomi Syari'ah Kontemporer," *Al-Ahkam* 27, no. 1 (2017): 59–82.

<sup>10</sup> Hijrah Saputra K., Andriansyah Syihabuddin, dan Adhika Prasetya, ed., *Himpunan Fatwa Keuangan Syariah Dewan Syariah Nasional MUI* (Jakarta: Erlangga, 2014), 898–99.

which are said to be dynamic, elastic and flexible.

Changes in society in various aspects, whether economic, political, social, cultural, etc., have been responded to by Islam appropriately.<sup>11</sup> This attitude is an embodiment of Islam's function as social control, social engineering and social welfare.<sup>12</sup> In Al-Quran terms, it is often referred to as rahmatan lil 'alamin.<sup>13</sup> Islam has provided important principles regarding rational development in an effort to adapt to its new environment. Through a pattern like this, Islam is able to avoid a dilemmatic legal crisis among its own public.<sup>14</sup>

Departing from this phenomenon, the MUI, through the National Sharia Council which it formed, responded to the rapid development of Sharia economics and finance in Indonesia by providing dynamic signs (Fatwa) regarding the sharia of all products and transactions of sharia financial institutions in accordance with the challenges faced but still placed within the framework of sharia. established. Because fatwa is part of the study of jurisprudence and ushul jurisprudence.<sup>15</sup> So, in the process of issuing a fatwa, it must go through the correct legal istinbath procedure.<sup>16</sup> A fatwa is issued after in-depth study of the Qur'an, al-Sunnah, al-Ijma', and al-Qiyas (Agreed Sources)<sup>17</sup> and other non-agreed sources,<sup>18</sup> namely al-Istishab, Sadd al-Zari'ah, and al-'Urf. That is the basis and procedure in the process of determining a fatwa agreed upon by the majority of the Fuqaha.

Based on the fact of the rapid development of Sharia economics and finance in Indonesia, fatwas issued by DSN-MUI must also follow these developments so as not to be out of date, but still pay attention to the dalil and Manhaj al-Ifta in determining a fatwa. From here it can be seen that there is a common thread between social facts, fatwas, and the DSN-MUI Manhaj al-Ifta which makes it interesting to study in depth in order to reach an argumentative conclusion.

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<sup>11</sup> A. S. Kausar, "Islam Dalam Globalisasi: Tantangan Agama Dalam Manajemen Keutuhan Umat," *Millah: Journal of Religious Studies*, 2012, 379–98.

<sup>12</sup> Fateh, "Konstruksi Filosofis Fatwa DSN-MUI," 157.

<sup>13</sup> Abdul Wahab Syakhrani dan Muhammad Rivaldi Yudistira, "Dasar Keislaman Sebagai Agama Rahmatan Lilalamin," *MUSHAF JOURNAL: Jurnal Ilmu Al Quran dan Hadis* 2, no. 3 (2022): 263–69.

<sup>14</sup> Pujiono, *Hukum Islam Dan Dinamika Perkembangan Masyarakat* (Yogyakarta: Mitra Pustaka, 2012), 59–60.

<sup>15</sup> H. M. Atho Mudzhar, "Fatwa MUI Sebagai Obyek Kajian Hukum Islam Dan Sumber Sejarah Sosial," dalam *Fatwa Majelis Ulama Indonesia (MUI) Dalam Perspektif Hukum dan Perundang-Undangan*, 2 ed. (Jakarta: Pusat Penelitian dan Pengembangan Kehidupan Keagamaan Badan Penelitian dan Pengembangan dan Pendidikan dan Pelatihan Kementerian Agama Republik Indonesia, 2012), xxv.

<sup>16</sup> Ahmad Munjin Nasih, "Lembaga Fatwa Keagamaan di Indonesia (Telaah Atas Lembaga Majelis Tarjih dan Lajnah Bathsul Masail)," *De Jure: Jurnal Hukum dan Syar'iah* 5, no. 1 (2013), <http://ejournal.uin-malang.ac.id/index.php/syariah/article/view/2997>.

<sup>17</sup> Al-Imam Abu Hamid Muhammad bin Muhammad Al- Ghazali, *Al-Mustasyfa min 'Ilm Al-Ushul* (Beirut: Dar Al-Kutub Al-'Ilmiyah, t.t.), 255.

<sup>18</sup> Syamsuddin Abu Abdillah Muhammad bin Abi Bakr bin Ayyub, *A'lam Al-Muwaqqi'in 'An Rabb Al-'Alamin* (Kairo: Al-Dar Al-'Alamiyyah, 2015), 285, 646, 762.

## RESEARCH METHOD

Legal research means research in the branch of science related to legal principles and legal institutions. The type of research used is library research with a normative legal approach, namely research that focuses more on the image of law as a prescriptive discipline.<sup>19</sup>

In this normative legal research approach, other approaches are also used, namely, first, the statutory approach.<sup>20</sup> The legislative approach referred to in the context of this research is to examine the procedures and all DSN-MUI Manhaj al-Ifta which is the basis for DSN-MUI in issuing its fatwas related to Sharia economic and financial issues. This approach views law as identical to written norms created and promulgated by authorized officials. The legislative approach is comprehensive, all-inclusive and systematic. Second, the author uses an analytical approach to legal materials to determine the meaning contained in the terms used in the process of determining DSN-MUI fatwas conceptually.<sup>21</sup> Thus, it can be said that basically the task of legal analysis is to analyze the meaning of law, legal foundations, legal rules and Manhaj al-Ifta, legal systems, and various juridical concepts. Based on research according to the level of explanation, the form of problem formulation in this research is descriptive.<sup>22</sup> Paying attention to the reasons stated in the background of this problem, the main issue raised in this research is the methodological procedure for DSN-MUI fatwas in Islamic economics and finance.

## RESULTS AND DISCUSSION

Sharia Banking fatwas issued by DSN-MUI are based on problems raised by LKS or the government or the opinion of DSN which considers a fatwa necessary.<sup>23</sup> All ulama stated that a fatwa is an opinion according to Islamic law based on problems submitted by the fatwa requester (al-Mustafti) either individually or as a group to the fatwa maker (al-Mufti).<sup>24</sup> Yusuf al-Qaradawi stated that a fatwa is:

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<sup>19</sup> Yati Nurhayati, Ifrani Ifrani, dan M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Penegakan Hukum Indonesia* 2, no. 1 (2021): 1–20.

<sup>20</sup> Suhaimi Suhaimi, "Problem Hukum Dan Pendekatan Dalam Penelitian Hukum Normatif," *Jurnal Yustitia* 19, no. 2 (2018), <http://36.88.105.228/index.php/yustitia/article/view/477>.

<sup>21</sup> I. Gusti Ketut Ariawan, "Metode Penelitian Hukum Normatif," *Kertha Widya* 1, no. 1 (2013), <https://ejournal.unipas.ac.id/index.php/KW/article/view/419>.

<sup>22</sup> Sugiyono, *Metode Penelitian Bisnis (Pendekatan Kuantitatif, Kualitatif, Dan R&D)* (Bandung: CV Alfabeta, 2012), 35.

<sup>23</sup> Ahmad Badrut Tamam, "Kedudukan Fatwa Majelis Ulama Indonesia (MUI) Dan Fatwa Dewan Syariah Nasional (DSN) Dalam Sistem Hukum Indonesia," *Al-Musthofa: Journal Of Sharia Economics* 4, no. 1 (2021): 62–78.

<sup>24</sup> Slamet Suhartono, "Eksistensi Fatwa Majelis Ulama Indonesia dalam Perspektif Negara Hukum Pancasila," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 2 (2017): 448–65.

بيان الحكم الشرعيّ في قضية من القضايا جوابا عن سؤال سائل ، معين كان أو مبهم فرد أو جماعة .<sup>25</sup>

Meaning: Explaining Sharia law in a matter as an answer to a question, whether the questioner's identity is clear or not, whether individually or collectively.

The results of Yeni Salma's research, as presented by Ansori and friends, found that there were at least 39 DSN fatwas that did not indicate any questions or problems raised by Mustafti.<sup>26</sup> In contrast to Yeni Salma, Hasanudin said, as conveyed by Hasanah, all fatwas made by DSN were based on requests from Mustafti.<sup>27</sup> The absence of mention of the names of Mustafti in the DSN fatwas is a lack of accuracy and administrative order. However, Hasanudin also stated that the issuance of DSN Fatwa No. 25/DSN-MUI/III/2002 about Rahn was a fatwa that was not requested based on Mustafti's request. The National Sharia Council is of the opinion that there needs to be a fatwa regarding rahn to become the main reference or guideline for the issuance of Fatwa DSN No. 26/DSN-MUI/III/2002 about the Golden Rahn requested by mustafti.<sup>28</sup> The case of a fatwa issued by the DSN-MUI without prior questions from Mustafti, shows developments regarding the existence of fatwas that the issuance of fatwas is not only based on Mustafti's request but is also based on the Mufti's opinion that a fatwa needs to be made. The attitude of the ulama and experts who are members of the DSN-MUI like this does not violate the provisions of procedures and methods for giving fatwa, because as Yusuf al-Qaradawi said, the Koran itself sometimes provides explanations of something without any questions or requests for fatwa, and how This is what is dominant in the Qur'an, both regarding legal issues and advice and teaching.<sup>29</sup> Likewise, in al-Sunnah, there are times when Rasulullah PBUH explains the law of a problem directly without being asked a question from someone. Usually he does things like this to eliminate misunderstandings, to correct understanding, to teach those who don't know, to strengthen the hearts of people who are seeking knowledge, to single out the general or provide

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<sup>25</sup> *Al Fatwa Baina al Indhibath wa al Tasayyub* (Kairo: Dar al Shahwah, 1988), 11.

<sup>26</sup> Ansori Ansori, Labib Mughni, dan Marwadi Marwadi, "Dinamika Pemikiran Hukum Islam Majelis Ulama Indonesia: Studi Pembaruan Fatwa," 2020, [https://eprints.uinsaizu.ac.id/18597/1/Dinamika%20Pemikiran%20Hukum%20Islam%20Majelis%20Ulama%20Indonesia-Studi%20Pembaruan%20Fatwa\\_Marwadi.pdf](https://eprints.uinsaizu.ac.id/18597/1/Dinamika%20Pemikiran%20Hukum%20Islam%20Majelis%20Ulama%20Indonesia-Studi%20Pembaruan%20Fatwa_Marwadi.pdf).

<sup>27</sup> Tuti Hasanah, "Eksistensi Fatwa Dsn Mui Pasca UU No. 1 Tahun 2013 Tentang Lembaga Keuangan Mikro (studi Pada Koperasi Syariah Kota Banjarmasin)," dalam *Proceeding Antasari International Conference*, vol. 1, 2019, <https://jurnal.uin-antasari.ac.id/index.php/proceeding/article/view/3717>.

<sup>28</sup> Yeni Salma Barlenti, *Kedudukan Fatwa Dewan Syariah Nasional Dalam Sistem Hukum Nasional Indonesia* (Jakarta: Badan Penelitian dan Pengembangan dan Pendidikan dan Pelatihan Kementerian Agama, 2010), 191.

<sup>29</sup> Yusuf Qaradawi, *Al Fatawa Baina Al-Indhibath wa Al-Tasayyub* (Kairo: Dar Al-Shahwah, 1988), 11.

provisions for the absolute (not bound), as the Prophet's explanation of al- Qur'an or for other purposes.<sup>30</sup>

One of the requirements for determining a fatwa is that it must fulfill the procedures and methodology (al-manhaj) in giving a fatwa, because issuing a fatwa without heeding al-manhaj is something that is prohibited by religion.<sup>31</sup> DSN-MUI in issuing its fatwas avoids both attitudes, namely excessive attitude (ifrathi) and reckless attitude (tafrithi).<sup>32</sup> DSN-MUI holds two approaches which are at the same time the spirit of every fatwa issued, namely, first, a gradual (tadriji) and voluntary (tathawwu'i) approach, not forced (tajabburi)<sup>33</sup> and second, using a fiqh approach that provides solutions (Makharij al-Fiqhiyyah) rather than fiqh that merely limits or even prohibits, so that DSN fatwas can not only meet the needs of the perpetrators, but still fulfill a strong sharia basis.<sup>34</sup> Starting from these two approaches, the ulama and experts who are members of the DSN-MUI agreed on four principles of jurisprudence which are the basis for determining DSN-MUI fatwas, namely Taysir al-Manhaj,<sup>35</sup> Tafriq al-Halal 'an al-Haram,<sup>36</sup> I'adat an-Nazhar,<sup>37</sup> and Tanqih al-Manath.<sup>38</sup>

Taysir al-Manhaj is to use a method that makes things easier, easier but still within the corridors of the rules of legal opinion.<sup>39</sup> The ulama explained that the fatwa to be issued must be based on Fiqh al-Hal, understanding of mustafti conditions, and understanding of reality (Fiqh al-

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<sup>30</sup> Qaradhawi, 12.

<sup>31</sup> Ahmad Mukhlisin, Aan Suhendri, dan Muhammad Dimiyati, "Metode Penetapan Hukum Dalam Berfatwa," *Al-Istinbath: Jurnal Hukum Islam* 3, no. 2 Desember (2018): 167–84.

<sup>32</sup> M. Atho Mudzhar, "Revitalisasi Maqasid al-Shari'ah dalam Pengembangan Ekonomi Syariah di Indonesia (Studi Kasus atas Fatwa-fatwa DSN-MUI Tahun 2000-2006)," *Jurnal Indo-Islamika* 4, no. 1 (2014): 1–19.

<sup>33</sup> Soleh Hasan Wahid, "Pola Transformasi Fatwa Ekonomi Syariah DSN-MUI dalam peraturan perundang-undangan di indonesia," *Ahkam: Jurnal Hukum Islam* 4, no. 2 (2016): 2–171.

<sup>34</sup> Ma'ruf Amin, "Solusi Hukum Islam (makharij Fiqhiyyah) Sebagai Pendorong Arus Baru Ekonomi Syariah Di Indonesia: Kontribusi Fatwa DSN-MUI Dalam Peraturan Perundang-Undangan RI," 2017, <http://repository.uin-malang.ac.id/1921/>.

<sup>35</sup> Syamsiah Muhsin, "Implementasi Hybrid Contract pada Transaksi Pembiayaan MULIA di Unit Pelayanan Syariah Pegadaian cabang Pangkajene" (PhD Thesis, IAIN Parepare, 2019), <http://repository.iainpare.ac.id/id/eprint/2127/>.

<sup>36</sup> Famirotul Lail dan Mohammad Ali Hisyam, "Metode Tafriq Al-Halal 'an Al-Haram Dalam Fatwa DSN-MUI Untuk Pengelolaan Keuangan Islam (sebuah Kajian Istinbat Hukum)," *Kaffa: Journal of Sharia Economic & Bussines Law* 1, no. 2 (2022): 1–11.

<sup>37</sup> Amin, "Solusi Hukum Islam (makharij Fiqhiyyah) Sebagai Pendorong Arus Baru Ekonomi Syariah Di Indonesia."

<sup>38</sup> Meirison Meirison, "Implementasi Tanqih Al-Manath dalam Penerapan Hukum," *Nizham: Jurnal Studi Keislaman* 2, no. 1 (2017): 94–111.

<sup>39</sup> Zaenal Mutaqin dan Ridzwan Ahmad, "Prinsip Memudahkan Urusan dalam Sosiologi Islam," *TEMALI: Jurnal Pembangunan Sosial* 3, no. 1 (2020): 236–59.

Waqi').<sup>40</sup> The implementation of Taysir al-Manhaj in every DSN fatwa is a manifestation of the Islamic principle of Wasathiyah which is a characteristic of the religious views of the MUI. From this principle, a rule of fiqh was born which was created by DSN-MUI scholars. The rule reads:

الأخذ بأرجح الأقوال والأصلح إن أمكن وإلا فالأصلح

Namely taking a stronger and more beneficial opinion if possible. If it is not possible to take both then take the one that is more beneficial.<sup>41</sup> Thus, the DSN fatwa is more flexible, contains benefits, solutions and is fair.<sup>42</sup> The next rule is:

الأخذ بالأصلح والمراعاة الخلاف.

Namely taking what is most beneficial while still paying attention to differences of opinion. Based on these rules, a mufti is allowed to take a more maslahah opinion, even if the opinion is marjuh, weak, but still pays attention to differences of opinion (Mura'ah al-Khilaf).<sup>43</sup> This can be done because the original law in muamalah is permissible (Mubah).

الأصل في المعاملة الإباحة إلا ما دلّ الدليل في تحريمها.

Namely, the original law of muamalah is that it is permissible unless there is an argument showing that it is prohibited. One of the provisions of the fatwa is that it must pay attention to differences of opinion of ulama because many of these differences of opinion give rise to many laws so it is mandatory to analyze them before a mufti issues a law.<sup>44</sup>

Next, Tafriq al-Halal 'an al-Haram, is the separation of halal from haram.<sup>45</sup> Property and money in the view of jurisprudence are not objects that can be judged for their substance but rather for the way they were obtained, so that if they are mixed between halal and haram they are

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<sup>40</sup> Sutanto Sutanto, "Konstruk Maqasid Syariah Fikih Muamalah Dalam Pemikiran Abdullah Bin Bayyah" (PhD Thesis, Institut Agama Islam Negeri Purwokerto (Indonesia), 2021), <https://search.proquest.com/openview/658db436eea3e69d06819920574bbd90/1?pq-origsite=gscholar&cbl=2026366&diss=y>. Mukhammad Abdullah, "Mengurai Model Pendidikan Pesantren Berbasis Moderasi Agama: dari Klasik ke Modern," *Prosiding Nasional* 2 (2019): 55–74.

<sup>41</sup> Ikhwanuddin Harahap, "Pendekatan Al-Maslahah Dalam Fatwa Majelis Ulama Indonesia (MUI) Nomor 24 Tahun 2017 Tentang Hukum Dan Pedoman Bermuamalah Melalui Media Sosial," *Yurisprudencia: Jurnal Hukum Ekonomi* 3, no. 1 (2017): 47–65.

<sup>42</sup> Tyas Zulmia, "Relevansi Fatwa MUI No. 23 Tahun 2020 Tentang Pemanfaatan Harta ZIS Untuk Penanggulangan Wabah dan Dampak Covid-19 Dengan Kontekstualisasi Pendayagunaan Zakat KH. MA. Sahal Mahfudh" (PhD Thesis, IAIN KUDUS, 2020), <http://repository.iainkudus.ac.id/4915/>.

<sup>43</sup> Risyda Nurul Qolbi, "Metode Istislah (Maslahah) Dan Posisinya Dalam Menyelesaikan Persoalan Ekonomi Modern," *Sharia and Economy: Jurnal Hukum Ekonomi Syariah dan Keuangan Islam (Sharecom)* 1, no. 1 (2023): 30–39.

<sup>44</sup> Andi Fariana, "Urgensi Fatwa MUI Dalam Pembangunan Sistem Hukum Ekonomi Islam Di Indonesia," *Al-Ihkam: Jurnal Hukum & Pranata Sosial* 12, no. 1 (2017): 87–106.

<sup>45</sup> Lail dan Hisyam, "Metode Tafriq Al-Halal 'an Al-Haram Dalam Fatwa DSN-MUI Untuk Pengelolaan Keuangan Islam (sebuah Kajian Istibat Hukum)."



not necessarily all condemned as haram, because accounting is very possible to separate them. In this case it can be seen that DSN uses the *Tafriq al-Halal 'an al-Haram* method. So that what is haram remains haram and what is halal remains halal. The principle held by DSN-MUI is in line with the view of Ibnu Shalah who said that if halal money is mixed with haram money and cannot be distinguished, then the solution is to separate the haram part and use the rest.<sup>46</sup>

In several books of jurisprudence it is stated:

يجوز معاملة من أكثر ماله حرام.

Namely, it is permissible to engage in muamalah with people whose majority of wealth is haram. So, it is permissible to combine capital from assets that are partly halal with assets that are partly haram, but the conditions are separated, which are the proceeds from the halal and which are the proceeds from the haram.<sup>47</sup> So, only the amount is separated between the halal amount and the haram amount, while the currency does not need to be separated because the currency does not have halal and haram characteristics.<sup>48</sup>

The next principle in *Manhaj al-Iftha* DSN is *I'adat al-Nazhar* which means re-examination, namely reviewing the opinions of previous scholars which are considered no longer relevant to adhere to because of the difficulty of implementing these opinions (*Ta'assur wa Ta'azzur al-'Amal*).<sup>49</sup> This *Manhaj* shows the progressive and brave steps taken by the ulama and experts who are members of the DSN-MUI to move away from the texts of previous ulama's opinions, especially previous views that are no longer relevant to be implemented in the current context. This attitude has actually also been carried out among previous ulama, as illustrated by the following statement by al-Qarafi:

الجمود على المنقولات أبدا ضلال في الدين وجهل بمقاصد علماء المسلمين والسلف الماضين .

Namely, always fixating on the text of the opinions of previous scholars is a mistake in religion and ignorance of what the previous scholars wanted.<sup>50</sup> Almost the same statement was

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<sup>46</sup> Roni Hidayat, "Studi Hadis Rujukan Fatwa Dewan Syariah Nasional (DSN) Majelis Ulama Indonesia (MUI) Tentang Produk Perbankan Syariah," diakses 24 April 2024, <https://repository.uinjkt.ac.id/dspace/handle/123456789/58221>.

<sup>47</sup> Fuad Malik Al Faqih, Zaini Abdul Malik, dan Liza Dzulhijjah, "Pengelolaan Zakat Dana Non Halal Baznas Kota Bandung Berdasarkan Prespektif Fikih Muamalah dan Undang-Undang Nomor 23 Tahun 2011 tentang Pengelolaan Zakat," dalam *Bandung Conference Series: Sharia Economic Law*, vol. 4, 2024, 43–52, <https://proceedings.unisba.ac.id/index.php/BCSSEL/article/view/10671>.

<sup>48</sup> Mudzhar, "Revitalisasi Maqasid al-Shari'ah dalam Pengembangan Ekonomi Syariah di Indonesia (Studi Kasus atas Fatwa-fatwa DSN-MUI Tahun 2000-2006)."

<sup>49</sup> Hasan Bisri, "Hukum Islam dan Perubahan Sosial: Telaah atas Ijtihâd Fardi dan Jamâ'i," 2008, <https://riset-iaid.net/index.php/tajdid/article/view/314>.

<sup>50</sup> Hal senada disampaikan dalam Yolana Hardika Pratama, "Fenomena Tafsir Tekstual Dalam Media Sosial," *Maliki Interdisciplinary Journal* 1, no. 6 (2023): 217–31.

made by Sheikh Abdullah Baswedan,<sup>51</sup> that the Imams of the Syafi'iyah School have different choices from the choices of the Shafi'i Imams. They stick to this choice when it is not possible to use the methods established by the school. Cases like this happen very often, and according to reliable opinions, things like this are not outside the scope of the Shafi'iyah school of thought. This can sometimes happen by using Imam Syafi'i's law-making method, or by Qiyas method, or by using rules formulated by him, or by choosing the previous opinion (Qawl Qadim), or because there is a more valid opinion. Imam Syafi'i once said:

إذا صحَّ الحديث فهو مذهبي.

Imam Syafi'i's words show that his school of thought is an opinion that is in accordance with the hadith and that an opinion that violates the hadith should not be attributed to him.<sup>52</sup> Using the principle of I'adat al-Nazhar by DSN-MUI so that the DSN-MUI fatwas issued are in accordance with current conditions, contain masalah, solutions and are fair.

The final principle of Manhaj al-Ifta DSN-MUI is Tahqiq al-Manath, an analysis to find the cause ('illah) of other laws in a case other than the previously known 'illah. Or find new relevance because the law has changed.<sup>53</sup>

One of the manhaj that can break the ice in the development of Islamic law and bring wider benefits, but does not violate the signs of the Sharia text, is to revitalize the concept of Tahqiq al-Manath in determining the law of a problem.<sup>54</sup> Tahqiq al-Manath is important in the process of determining the DSN-MUI fatwa which is a solution, namely through exploring and examining legal reasons that are more contextual, more relevant to existing developments.<sup>55</sup> The concept of Tahqiq al-Manath is the choice of scholars in determining a problem, because this concept is believed to be able to bridge the guidance of the Sharia text and the demands of factual cases.<sup>56</sup>

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<sup>51</sup> Ma'ruf Amin, *Fatwa Dalam Sistem Hukum Islam* (Jakarta: eSAS, t.t.), 262–63.

<sup>52</sup> Ayyub, *A'lam Al-Muwaqqi'in 'An Rabb Al-'Alamin*, 1119.

<sup>53</sup> Fathurrahman Azhari, "Pemikiran Ulama Tentang 'Illat Hukum (Suatu Kajian Ushul Fiqh)," *Jurnal Darussalam* 15, no. 2 (Desember 2014): 35–42.

<sup>54</sup> Moh Romli, "Ushul Fiqh Sebagai Kerangka Berpikir Dalam Istinbath Hukum Ekonomi Islam," *Al-Kharaj: Jurnal Ekonomi, Keuangan & Bisnis Syariah* 1, no. 2 (2019): 167–74.

<sup>55</sup> Ahmad Mutamimul Ula, "Fatwa Ta'zîr dan Ta'wîd di Perbankan Syariah Serta Adopsinya di Lembaga Otoritas Keuangan Syariah." (Master's Thesis, Fakultas Syariah dan Hukum UIN Syarif Hidayatullah Jakarta), diakses 26 April 2024, <https://repository.uinjkt.ac.id/dspace/handle/123456789/73574>.

<sup>56</sup> Asmuni Mth, "Studi pemikiran al-Maqashid (Upaya Menemukan Fondasi Ijtihad Akademik yang Dinamis)," *Al-Mawarid: Jurnal Hukum Islam* 14 (2005), <https://journal.uii.ac.id/JHI/article/view/2814>.

An example of the implementation of Tahqiq al-Manath is Umar bin Khattab's ijihad which eliminated the Ashnaf section "Muallafatu Qulubuhum" from the mustahiq zakat list,<sup>57</sup> and the hand of someone who steals during times of famine is not cut off.<sup>58</sup>

Pay attention to the composition and personnel of the DSN-MUI management for the 2021-2025 solemn period which consists of ulama and experts in various fields of Sharia economics and finance and can also be seen in some of the educational and work histories of those who sit at BPH DSN-MUI, including the field Syariah banking. Their expertise and expertise in their scientific specialty guarantees the honesty and correctness of the fatwa they make, on the other hand it also shows that they fulfill the requirements for a fatwa maker set by the ulama.<sup>59</sup>

In terms of fatwa form, the fatwas issued by DSN-MUI are fatwas produced in the form of Ijtihad Jama'i. Where the process of making and determining it involves a number of ulama and experts from various scientific specialties who are members of the DSN-MUI management. Ijtihad Jama'i is the formulation of in-depth thoughts carried out collectively by a group of experts in various scientific fields who try to find a legal solution to a problem.

## CONCLUSION

Fatwas in Sharia economics and finance are crucial for providing specific guidance on issues that are not explicitly detailed in the Qur'an and al-Hadith. Due to the global and sometimes ambiguous nature of these religious texts, detailed interpretations and fatwas are necessary to address contemporary problems faced by Muslims. Fatwas are legal decisions made by Islamic scholars that must evolve with social changes, advancements in science and technology, and the emergence of new cases that require fresh ijihad (independent reasoning). This dynamism ensures that fatwas remain relevant and practical for addressing the complexities of modern Sharia economic and financial issues.

The research highlights the methodology and principles used by the National Sharia Council (DSN-MUI) in Indonesia for issuing fatwas. The DSN-MUI adopts a comprehensive approach that includes legislative and analytical methods to ensure that their fatwas are grounded

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<sup>57</sup> Muhammad Baiquni Syihab dan Yuana Tri Utomo, "Praktek Ekonomi Islam Umar Bin Khatab Sebagai Kepala Negara," *Humantech: Jurnal Ilmiah Multidisiplin Indonesia* 2, no. Special Issue 2 (2022): 549–58.

<sup>58</sup> Amir Sahidin, "Telaah Atas Ijtihad Umar Bin Khaṭṭab Perspektif Maqāṣid Al-Syarī'ah," *Jurnal Penelitian Medan Agama* 14, no. 1 (2023): 25–34.

<sup>59</sup> Acme Admira Arafah, "Corak Mazhab Pada Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia (Dsn-Mui)" (PhD Thesis, Universitas Islam Negeri Sumatera Utara, 2017), <http://repository.uinsu.ac.id/id/eprint/6151>.

in both traditional Islamic jurisprudence and contemporary realities. The council emphasizes flexibility, benefit, and fairness in its fatwas, adhering to principles such as Taysir Al-Manhaj (ease of method), Tafriq Al-Halal ‘an Al-Haram (separation of lawful from unlawful), I’adat An-Nazhar (re-examination of previous opinions), and Tahqiq Al-Manath (contextual analysis). These principles enable the DSN-MUI to provide practical and relevant legal solutions that align with Sharia while addressing the needs and circumstances of modern society.

The DSN-MUI's approach to fatwa issuance reflects a balance between adherence to traditional Islamic law and the necessity to adapt to contemporary challenges. By involving a diverse group of scholars and experts, the council ensures that its fatwas are the result of collective ijtihad, incorporating insights from various fields. This inclusive and dynamic process allows the DSN-MUI to address the evolving landscape of Sharia economics and finance effectively. The council's commitment to both the integrity of Islamic law and the practical demands of modernity demonstrates the enduring relevance and flexibility of Sharia in guiding the economic and financial practices of Muslims today.

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