

Analysis of DSN-MUI *Fatwa* for 2000-2022 Concerning Sharia Banking: Review of Sociology of Law and *Istinbath* Islamic Law

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Abstract

From 2000 to June 2022, DSN-MUI has issued 152 *fatwa* products. DSN-MUI uses three approaches in the *fatwa* determination process, namely the *nash qath'i* approach, the *qauli (bayani)* approach, and the *manhaji* approach. Despite having the legal *istinbath* method, there are still many people questioning the DSN-MUI *fatwa* product. DSN-MUI is seen as preferring the opinion of *ashlah* (more beneficial) than the opinion of *arjah* (stronger). Based on the above, it is important to examine the sociological relationship between the background of the DSN-MUI *fatwa* and the DSN-MUI *fatwa istinbath* method and its implications for *fatwa* products. Samples of DSN-MUI *fatwa* examined 31 *fatwa*. The objectives of this study are, to analyzing sociological relations that affect the DSN-MUI *fatwa* for 2000-2022 concerning sharia banking, and analyze the pattern of DSN-MUI *fatwa* for 2000-2022 concerning sharia banking in the perspective of Islamic legal institutions. This research is empirical and normative research. Empirical research is used to examine the sociological relationship between *fatwa* and external factors that have the potential to influence them, while normative research is used to examine the suitability of *fatwa* with the concept of Islamic legal *istinbath*. The conclusions and findings of this study are, external factors, both *mustafti*, PBI, POJK, and PMA KHES do not affect the pattern of DSN-MUI *fatwa* for 2000-2022 concerning sharia banking studied. On the other hand, DSN-MUI *fatwa* are absorbed in PBI, POJK, and KHES in sharia contracts. The pattern of DSN-MUI *fatwa* for 2000-2022 concerning sharia banking studied predominantly uses the *manhaji* approach (21 *fatwa* or 67,70%), followed by *qath'i* and *bayani* (6 *fatwa* or 19,40%), and *qath'i* approach (2 *fatwa* or 6,45%).

Keywords: DSN-MUI; *Fatwa*; *Istinbath*; Sociology of Law



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Introduction

Since the 90s, the sharia economy, especially sharia finance, has experienced significant growth. Sharia economic growth is marked by an increasing number of Sharia Financial Institutions (LKS) and Sharia Business Institution (LBS). The growth of sharia banking is relatively the fastest compared to other financial institutions, such as sharia insurance, sharia mortgage, sharia financing, and sharia capital market. Since it was first established in 1991 with the birth of Bank Muamalat, the sharia bank has continued to grow from year to year. Even It turns out that Indonesia has the most sharia banks in the world. According to OJK data In the Sharia Banking Statistics (SPS) as of December 2022, the number of sharia banks in Indonesia currently amounts to 200 sharia banks. The details are 13 Sharia Commercial Banks (BUS), 20 Sharia Business Units (UUS), and 167 Sharia People's Financing Banks (BPRS) (OJK, 2022).

Fatwa in the field of economics, sharia has an important role in answering the growing needs of sharia economic products. From 2000 to June 2022, DSN-MUI has issued 152 *fatwa* products (Dimiyati, 2022). The most important thing in determining *fatwa* is the method of determining *fatwa*. The method of determining DSN-MUI *fatwa* follows the guidelines or guidelines set by the MUI, namely based on MUI *fatwa* No. U-596/MUI/X/1997 dated June 2, 1997 concerning the Method of Determining *Fatwa* (Dimiyati, 2022).

Prof. Dr. (HC) KH. Ma'ruf Amin in his scientific oration entitled "*The Solution of Islamic Law (Makharij Fiqhiyyah) as a Driver of New Flows of Sharia Economy in Indonesia (Contribution DSN-MUI Fatwa in the RI Legal Regulations)*" states that in the process of determining DSN-MUI *fatwa*, the methodology (*manhaj*) the enactment of law that has been formulated by previous scholars remains the main choice as a tool for seeking legal answers (*istinbath al-hukmi*). DSN-MUI uses three approaches in the *fatwa* determination process, namely the *nash qath'i* approach, *qauli* approach, and *manhaj* approach (Amin, 2017).

Although it already has a method *istinbath* law, there are still many people questioning the *fatwa* product of DSN-MUI. Some even say it has happened paradox on the *fatwa* of the DSN MUI in the regulation of sharia banking law (Baehaqi, 2017). The nature of business capitalism that penetrates all sectors, especially the financial sector, makes *fatwa* products according to some people considered as the labeling of sharia conventional banking products based on usury. As a result, according to Hafidz Abdurrahman, there are a number of DSN-MUI *fatwa* products that are not in accordance with the provisions of Islamic sharia (Abdurrahman, 2012). From aspect *manhaj* (method) *istinbath fatwa*, *fatwa* product of DSN-MUI is also questionable. DSN-

MUI is seen as preferring opinions *ashlah* (more beneficial) than the opinion that *arjah* (stronger) according to the majority of scholars. Criticism of the DSN-MUI *fatwa* is also on the aspect of the relevance of the use of evidence to the *fatwa* substance. Erwandi Tarmizi in his book recommends revising a number of *fatwa*, because they are considered not in accordance with the rules *istinbath*, the laws and propositions are weak (Tarmizi, 2019).

As a result of this methodological debate in the community, there is a doubt, whether the *fatwa* of DSN-MUI is correct according to the rules *istinbath* Islamic law. The further impact is the level of public trust in sharia banks, until there is an assumption in the community that there is no difference between sharia banks and non sharia banks. That's why philosophically it is necessary to find a solution that is in accordance with the rules *istinbath* Islamic law for these disputed *fatwa*. Especially *fatwa* that cause debate or polemics. With this legal certainty, people become calmer when investing their funds or using funds from sharia banking.

There are at least two relevant previous studies. Research conducted by Nur Fatoni, UIN Walisongo Semarang, Dissertation entitled "*Normative-Philosophical Analysis of Islamic Law on Fatwa DSN-MUI on Sale and Purchase Transactions in Sharia Banks*", year 2022. The conclusion is that the DSN-MUI *fatwa* adopts the results of the *ijtihad* of classical scholars in terms of the use of *musammah shar'iyah* contracts, although not intact. The DSN-MUI *fatwa* on sale and purchase transactions in sharia banks is still limited to paying attention to formal normative aspects, and there are still shortcomings in formulating it. *Second*, a journal written by Mohammad Fateh with the title "*Philosophical Construction of DSN-MUI Fatwa*", 2018. This article examines the *ijtihad* method in determining the DSN-MUI *fatwa*, and its philosophical values by examining the use of *fiqh* rules related to *maslahat*. This study is categorized as qualitative research with data sources in the form of a set of DSN-MUI *fatwa* from 2000-2017. DSN-MUI in determining *fatwa* uses three approaches, namely the *nash qath'i* approach, *qauli* approach, and *manhaji* approach. There are differences between the results of *fatwa* decisions in 2000-2010 and *fatwa* decisions in 2011-2017. DSN-MUI *fatwa* decisions in 2000-2010 were textualist, both in terms of the Qur'anic arguments, Hadith, *ijma'*, *qiyas*, and classical fuqaha opinions used as a legal basis, as well as the use of monotonous *fiqh* rules. This is motivated by the prudence (*ihtiyat*) in issuing laws shown by MUI scholars. However, since 2010-2017 DSN-MUI *fatwa* often use *manhaji* approach by using *mashlahah* and *maqashid ash-shari'ah* as reasons for determining the law. In the two studies, no one has examined the sociological aspects of the DSN-MUI *fatwa* and this research has not been updated until 2022. Therefore,

in our opinion, it is necessary to conduct research on DSN-MUI *fatwa* that examine sociological and normative aspects (*istinbath* Islamic law) that are more updated.

By the background of the above problem is examined sociological relations on the background of the DSN-MUI *fatwa*. This study examined the relationship between DSN-MUI management, *mustafti*, Sharia Banking Law, Bank Indonesia Regulation (PBI), Financial Services Authority Regulation (POJK), and Supreme Court Regulation on the Compilation of Sharia Economic Law (KHES) with the pattern of DSN-MUI *fatwa* for 2000-2022 concerning sharia banking. This aspect is studied in the perspective of the sociology of law. In addition to sociological factors, internal factors that are a core part of the process of determining *fatwa* as a product of Islamic law are also studied, namely the compatibility of DSN-MUI *fatwa* on sharia banking with the method *istinbath* Islamic law. DSN-MUI *fatwa* researched from 2000 to 2022 on sharia banking.

Methodology

This research involves two disciplines, namely the science of sociology of law and the science of *ushul al-fiqh*, especially the *istinbath* method of Islamic law. This study uses two types of legal research, namely empirical research and normative research. Empirical research is used to find sociological relations between *fatwa* and external factors that have the potential to influence them, while normative research is used to examine the suitability of *fatwa* with the concept of *istinbath* Islamic law.

Approach is a way of dealing with something (as a problem) (Webster, 1995). According to Bambang Sunarto, the research approach is a research plan and procedure consisting of steps based on broad assumptions as a basis for determining methods in data collection, analysis or interpretation of data. According to Peter Mahmud Marzuki there are several approaches in legal research, namely statute approach, case approach, historical approach, comparative approach, and conceptual approach (Marzuki, 2017).

The approach used in this research is the historical approach and conceptual approach. The historical approach is carried out in order to understand the philosophy of the rule of law over time, as well as understand the changes and developments in the philosophy that underlies the rule of law. This approach is carried out by examining the background and development of regulations regarding the legal issues faced. The conceptual approach departs from the views and doctrines that develop in law. This approach is important because understanding the views/doctrines that develop in legal science can be a basis for building legal arguments when solving legal

issues faced. Views/doctrines will clarify ideas by providing legal understandings, legal concepts, and legal principles relevant to the problem.

The historical approach is used to examine the background of the determination of DSN-MUI *fatwa* in terms of the parties who submitted *fatwa* (*mustafti*) and the relationship between DSN-MUI *fatwa* and the Sharia Banking Law, Bank Indonesia Regulations (PBI), Financial Services Authority Regulations (POJK), and Supreme Court Regulations on the Compilation of Sharia Economic Law (KHES). The conceptual approach referred to in the study is the concepts of *fatwa* and *istinbath* Islamic law.

The technique of collecting legal materials in this study is library research. The legal materials used are primary legal materials and secondary legal materials. Primary legal material is legal material that is authoritative, meaning that it has authority such as laws, official records in the process of making legislation, and judges' decisions. While secondary materials are publications about law that are not official documents such as textbooks, legal dictionaries, legal journals, and commentaries on court decisions (Marzuki, 2017).

The primary legal material in this study is the *fatwa* of DSN-MUI, while the secondary legal material of this research is in the form of a scientific paper read by Prof. Dr. (HC) KH. Ma'ruf Amin at the awarding of his Doctoral degree (HC) at Maulana Malik Ibrahim State Islamic University Malang, books *ushul al-fikih*, books of jurisprudence, and other related references. Including secondary legal material used in this study is the result of interviews with competent parties with the making of DSN-MUI *fatwa*.

The first thing to do was to collect primary sources, namely the DSN-MUI *fatwa* from 2000 to 2022 on sharia banking. To answer the first research question, namely the sociological relation of DSN-MUI *fatwa* according to the review of the sociology of law, the analysis method used is descriptive exploratory. That is a study that seeks to describe a phenomenon or reality. Meanwhile, to answer the second research question, namely the pattern of DSN-MUI *fatwa* according to the review *istinbath* Islamic law uses a comparative method where DSN-MUI *fatwa* are analyzed by categorizing DSN-MUI *fatwa* by method *istinbath* DSN-MUI *fatwa* and compare it with the opinions of classical and contemporary scholars.

Results and Discussion

The study of *fatwa* and the socio political factors surrounding the issuance of *fatwa* can be seen as studies that see Islam as a cultural and social phenomenon. Thus, Islamic law can be viewed as a cultural phenomenon and as a social phenomenon. The philosophy and rules of Islamic law are cultural phenomena, whereas the interaction of Muslims with each other or with other societies around Islamic law is a social phenomenon. Related to that, according to Atho' Mudzhar, the study of Islamic law can be divided into three. *First*, the research of Islamic law as *azaz* doctrine. In this study the main targets are the conceptual foundations of Islamic law such as the problem of legal philosophy, sources of law, the concept of *maqasid al-shari'ah*, *qawaid al-fiqhiyyah*, *manhaj al-ijtihad*, *thariq al-istinbat*, the concept of *qiyas*, the concept of '*am* and *khas*, the concept of *nasikh* and *mansukh*, and others. *Second*, research into normative Islamic law. In this study the main target is Islamic law as a norm or rule, both those that are still in the form of *nash* and those that have become products of thought. Rules that are still in the form of *nash* include *ahkam* verses and *ahkam* Hadith, while those that have been in the form of thought products include books of jurisprudence, books of comparative jurisprudence, court decisions, laws, *ulama fatwa*, and other forms of binding rules such as the compilation of Islamic law, constitutions, legal codifications, international treaties, contract letters, wills, and so on. *Third*, the study of Islamic law as a social phenomenon. This study mainly targets the legal behavior of Muslim societies and the problems of interaction between human beings, both between Muslims and between Muslims and non Muslims, around the problems of Islamic law. This includes issues such as the politics of the formulation and application of law (*siyasa syar'iyah*), the behavior of law enforcers (judges), the behavior of legal thinkers such as *mujtahid*, *fuqaha*, *mufti*, and members of legislative bodies, administrative matters, and legal organizations such as courts of all levels, and associations of law enforcers and thinkers such as associations of religious judges, associations or study groups of Islamic legal enthusiasts, the *lajnah* of *fatwa* from religious organizations, as well as publishing or educational institutions that specialize in or encourage the study of Islamic law. This type of research also includes problems of evaluating the implementation and effectiveness of law, problems of the influence of law on the development of society and vice versa the influence of community development on the implementation or thought of law, the history of legal development, the history of legal administration, and problems of public legal awareness and attitude (Mudzhar, 1999).

The three forms of study above can be done separately and can also be done together to see the relationship with each other on an issue of Islamic law. The first two forms of Islamic legal studies, namely the study of Islamic law as the doctrine of *azaz* and the study of normative Islamic law, can also be combined and referred to as doctrinal Islamic legal studies, while the third form of Islamic legal studies can be referred to as sociological Islamic legal studies. The first two forms of study see Islam as a cultural phenomenon and the third form of study sees Islam as a social phenomenon (Mudzhar, 1999).

Basically *fatwa* are Islamic law. Theoretically, Islamic law does not change according to the wishes of society. However, methodologically the law can be different if the facts punished are different, including political and scientific facts. Similarly, methodologically, there may be changes in the determination of laws/*fatwa* if there are changes originating from the legal system itself, for example stronger arguments are found.

According to Atho' Mudzhar there were three factors that influenced the formulation of MUI *fatwa* from 1975-1988. *First*, factors related to the tendency to support government policies, such as *fatwa* on frog farming, the status of rabbit meat, slaughter animals by machinery, and family planning *fatwa*, have shown the nature of these *fatwa* support for government policies. *Second*, the factor of desire to face and answer the challenges of modern times. Like *fatwa* on the permissibility of corneal donations and heart transplants are *fatwa* that try to respond to modern developments in medicine. *Third*, interfaith relationship factors, such as the *fatwa haram* of a Muslim attending Christmas together (Mudzhar, 1999). Similarly, when viewed from the historical background of its establishment, MUI cannot be separated from the political elements of government. This has been alleged by a number of circles, for example M.B. Hooker stated that the formation of the MUI was a government initiative to make it easier to control Muslims during the New Order Government (Hooker, 2003). Azis Thaba also argued, the formation of MUI is an effort to tame "*political Islam*" but still accommodate the interests of "*Islamic worship*" (Thaba, 1996).

Given the existence of a number of MUI *fatwa* that are influenced by the socio political conditions surrounding them, it is also important to examine the sociological background of *fatwa* determined by DSN-MUI. Indicators of factors that have the potential to influence the *fatwa* of DSN-MUI researchers take from the elements of *fatwa*. The elements of a *fatwa* consist of, the *fatwa* applicant (*as-sa'il*), the *fatwa* giver (*mufti*), the genesis (*'amr nazil*), the shar'i postulate, and the law of Allah Swt. (Ahmad, n.d). From the above elements can be sorted into two parts, namely internal and

external. The elements of the applicant for *fatwa* (*al-sa'il*) and events (*'amr nazil*) can be classified in the study of external aspects. While the elements of *fatwa* givers (*mufti*), shari'i postulates, and sharia law (susbtansi *fatwa*) can be classified in internal aspects. Regarding events (*'amr nazil*) that have the potential to influence the contents of the DSN-MUI *fatwa* according to researchers, there are four, namely laws and regulations related to sharia banking, Bank Indonesia Regulations (PBI), Financial Services Authority Regulations (POJK), and PMA (Supreme Court Regulation) of the Republic of Indonesia Number 2 of 2008 concerning the Compilation of Sharia Economic Law (KHES). The *mufti* in this case is DSN-MUI although it is included in the internal aspect, but it is more sociological in nature, so in this study it is analyzed according to the review of the sociology of law. The postulates and laws of sharia (*fatwa* rulings) are analyzed using a review of *istinbath* Islamic law.

Fatwa issued by DSN-MUI is a *fatwa* on the sharia economy which includes products, contracts, and services carried out at LKS (Sharia Financial Institutions) and LBS (Sharia Business Institution). The *fatwa* was issued by DSN-MUI because, *first*, responding to the ideas of regulators (BI and OJK), which are usually intended to encourage business growth or prudence in sharia bank. *Second*, responding to the ideas of business actors in sharia bank. Usually to meet market demand in the form of products and contracts. *Third*, responding to the idea of the Sharia Supervisory Board (DPS). Usually to detail the implementation of existing DSN-MUI *fatwa*. And *fourth*, the idea of DSN-MUI itself. It usually refers to the opinions of scholars found in books of jurisprudence that *mu'tabarrah*, then offered to the perpetrator.

DSN-MUI *fatwa* determination method follow the guidelines or guidelines set by MUI. Based on MUI *Fatwa* No. U-596/MUI/X/1997 dated June 2, 1997, every issue discussed in the *fatwa* commission (including *fatwa* on the sharia economy) must be based on *Al-Qur'ân*, *Sunnah*, *ijma'*, and *qiyas*. In the guidelines for determining MUI *fatwa*, it is also stated that the opinions of Imam *Madzhab*. The problem to be decreed and its postulates must be studied first.

Explanation of the approach and method of determining DSN-MUI *fatwa* in more detail and specifically delivered by Prof. Dr. (HC) KH. Ma'ruf Amin in his scientific oration entitled "*The Solution of Islamic Law (Makharij Fiqhiyyah) as a Driver of New Flows of Sharia Economy in Indonesia (Fatwa Contribution DSN-MUI in the RI Legal Regulations)*" (Amin, 2020). He stated that in the process of determining the *fatwa* of DSN-MUI the method of legal determination that had been formulated by previous scholars remained the main choice as a tool to seek legal answers (*istinbath al-hukmi*). DSN-

MUI uses three approaches in the *fatwa* determination process, namely the *nash qath'i* approach, *qauli* approach, and *manhaji* approach (Amin, 2020).

Nash qath'i approach done by leaning on *nash* Al-Qur'an or Hadith as long as the answer of the law of sharia to the problem to be determined by the *fatwa* is contained in the Qur'an or Hadith in a timely manner *sharih* (obviously) (Amin, 2020). If it is not contained in the Qur'an or Hadith *sharih* (obviously) then the process of formulating the *fatwa* is carried out with an *qauli* approach and *manhaji* approach. *Qauli* approach used if the problem has been found to be answered through the opinions of jurists contained in credible books (*al-kutub al-mu'tabarah*) that '*illah*. The law is in harmony with what is happening today and there is only one opinion (*qaul*). In such conditions, the *fatwa* will use the opinion of the scholar. However, if the existing opinion is considered no longer suitable to be held, because *ta'assur* or *ta'adzdzur al-'amal* or *shu'ubah al-'amal*, very difficult to implement, or because '*illat* is different, so in this case it is necessary to do a review (*i'adah an-nazhar*) the opinion (Amin, 2020).

If the above two approaches cannot be used then the *manhaji* approach is used, using the method *al-jam'u wat taufiq*, *tarjihi*, *ilhaqi*, and *istinbathi* (Amin, 2020). The method of *al-jam'u wa al-taufiq* is used on the problem of *khilafiyah* among *imam* of the *madzhab*, so a meeting point is sought among the opinions of the *madzhab*. If the method of *al-jam'u wa al-taufiq* does not succeed in obtaining common ground, then the *tarjihi* method is used, which is to use the method of *muqaran al-madzahib* (comparison of the opinions of the school of jurisprudence) and favor one opinion over another opinion using the rules of *usul fiqh*. The *ilhaqi* method is to equate a problem that occurs today with its equivalent case in *al-kutub al-mu'tabarah*. Finally, the *istinbathi* method, this method is carried out by applying the methods of *qiyasi*, *istishlahi*, *istihsani*, and *sadd al-dzari'ah*. According to DSN-MUI, the determination of *fatwa* must also pay attention to the general benefit (*mashalih 'ammah*) and *maqashid al-shari'ah*.

Approach and method of DSN-MUI *fatwa* can be presented in the following table:

Table 1. Approaches and Methods of *Fatwa* Determination DSN-MUI

Approach	Source / Method	Prerequisite
<i>Nash Qath'i</i>	Al-Qur'an and Hadith	There is <i>nash sharih</i> , there is no <i>khilafiyah</i> among the <i>madzhab</i>
<i>Qawli / Bayani</i>	<i>Al-kutub al-mu'tabarah</i>	There is only one <i>qaul</i> and no <i>ta'ashshur</i> , or <i>ta'adzur al-a'mal</i> , or <i>shu'ubah al-a'mal</i> , or because 'illah changes
<i>Manhaji</i>	<i>Al-jam'u wa at- taufiq, tarjih, ilhaqi, and istinbathi</i>	There is no <i>nash sharih</i> , no <i>qaul mu'tabar</i> , or there is <i>qaul mu'tabar</i> but there is <i>ikhtilaf</i>

Source: Processed Data.

The DSN-MUI *fatwa* method uses *at-taisir al-manhaji*, which is a *fatwa* method that seeks to find the opinion of the *arjah* (stronger) as well as *ashlah* (more beneficial), but if it is not possible to achieve both at once, then *ashlah* takes precedence over the opinion of the *arjah*. Although leaning towards this *manhaj*, it does not mean that DSN-MUI collects easy from the concept of jurisprudence, but still adheres to certain rules or principles.

DSN-MUI 2000-2022 *fatwa* on sharia banking totaled 88 *fatwa*. However, because these 88 *fatwa* can be grouped into 25 groups based on the type of contract, not all *fatwa* were analyzed, only 31 *fatwa* were analyzed.

The analysis of DSN-MUI *fatwa* according to the review of the sociology of law is divided into two, namely the analysis of factors that have the opportunity to influence the pattern of DSN-MUI *fatwa* and the influence of DSN-MUI *fatwa* on the development of the sharia economy in Indonesia. Factors that have the opportunity to influence the pattern of DSN-MUI *fatwa* are further broken down into six, namely the relationship between DSN-MUI management and DSN-MUI *fatwa*, the relationship between *mustafti* and DSN-MUI *fatwa*, the relationship between Sharia Banking Law and DSN-MUI *fatwa*, the relationship between Bank Indonesia Regulations (PBI) and DSN-MUI *fatwa*, the relationship between OJK Regulations (POJK) and DSN-MUI *fatwa*, and the relationship between Supreme Court Regulations on the Compilation of Sharia Economic Law (KHES) and DSN-MUI *fatwa*. Meanwhile, the influence of DSN-MUI *fatwa* on the development of sharia economy in Indonesia is broken down into the influence of DSN-MUI *fatwa* on the issuance of PBI, POJK, and PMA KHES,

the influence of DSN-MUI *fatwa* on LKS compliance and the influence of DSN-MUI *fatwa* on public trust.

Based on the analysis of the perspective of the sociology of law and the *istinbath* of Islamic law, it can be seen that the dominant influencing factor is the internal factor (DSN-MUI *fatwa* determination method). The main pattern of the DSN-MUI *fatwa* method is *at-taisir al-manhaji*, the *mubah* of the original law of *muamalah* and allows multi contracts. The rule of law from the origin of *muamalah* is that *mubah* is quoted in *fatwa* 83 times out of 88 *fatwa* of DSN-MUI on sharia banking, meaning that this rule is quoted as much as 94,3%. This style of *fatwa* method is what allegedly makes DSN-MUI *fatwa* inclined to take what is considered *ashlah* rather than *arjah*.

The rules used by DSN-MUI in give a *fatwa* is “using more opinions diligent and more benefit if possible, if no, then that is used is more opinions benefit (only)” (Amin, 2020). Rule this researcher confirmation in interview with KH. Hasanuddin, he justify use this rule. The main thing is according to he is how obtained solution jurisprudence (*makharij fihiyah*) which is possible applied, though that is *marjuh* opinion (viewed weak). If linked with paper KH. Makruf Amin, use rule this the context is when respond difference paradigmatic in rule ‘*uqud mu’amalah*. If linked with 3 types deep DSN-MUI approach give a *fatwa* rule this operationalized in the approach third (approach *manhaji*), in accordance with discussion *at-taisir al-manhaj*, so rule *akhzu al-mashlahah* this no operationalized in the approach *nash qath’i* and approach *bayani (qauli)* (Amin, 2020). So, something relevant things if obtained findings about DSN-MUI *fatwa* pattern for 2000-2022 concerning sharia banking based on sample of *fatwa* studied dominant use approach *manhaji* (21 *fatwa* or 67,7%).

External factors, fine *mustafti*, PBI, POJK, and PMA KHES no give influence on the style of the DSN-MUI *fatwa*. This matter because DSN-MUI is independent *fatwa* institution (Hadi, 2011). This matter confirmed moment interview with KH. Hasanuddin from DSN-MUI. By normative of course it should. Thus, a *mufti* or *mujtahid* must be someone who has integrity (among others independence) when issue a *fatwa* or results of *ijtihad*. A *mufti* or *mujtahid* should be only fear Allah Swt. now *fatwa*, because he will responsible answer on *fatwa* (law *syara’*) which is passed on as a *fatwa* (Syarifuddin, 2014).

Related PBI relationship with the DSN-MUI *fatwa* was mentioned in Law Number 21 of 2008 concerning Sharia Banking in article 26 paragraph (3) it is stated, “The *fatwa* as intended in paragraph (2) is stated in a Bank Indonesia Regulation” (Indonesia, 2008a). This confirms what Dr. Jaih Mubarak that Bank Indonesia, when setting regulations, first coordinates with DSN-MUI. Likewise POJK, its status like PBI. Since

31 December 2013 it has happen transfer of bank regulatory and supervisory functions from Bank Indonesia (BI) to the Financial Services Authority (OJK). This in accordance mandate of Law Number 21 of 2011 concerning the Financial Services Authority (OJK) (Indonesia, 2011). Article 4 of Law Number 21 of 2011 concerning OJK states that OJK was formed with the aim of ensuring that all activities in the financial services sector are carried out in an orderly, fair, transparent, accountable manner, and are able to create a financial system that grows sustainably and stably, and is able to protect the interests of consumers and public.

Related PMA KHES relations with DSN-MUI *fatwa*, since year KHES will not be published from 2008 to 2022 there is a DSN-MUI *fatwa* that quotes or making KHES as consideration in determines the DSN-MUI *fatwa* (Indonesia, 2008b). According to researcher reason main matter this is because the DSN-MUI *fatwa* is specific answer question *mustafti* character case by case, while KHES contains guide general compilation law sharia economy. This appear from reference the main KHES are books in the field jurisprudence *muamalah*.

DSN-MUI *fatwa* regarding sharia banking of course own strong relationship with product existing legislation. There is a number contract used in the relevant *fatwa* contract collecting funds and distributing funds has been mentioned in on Republic of Indonesia Law No. 10 of 1998 concerning Change on Law No. 7 of 1992 concerning Banking. However in a way substantial mention contracts this still in general form, mention principles and definitions general. As for example in Article 1 paragraph (13) it is stated, "*The development of laws and regulations related to sharia banking is very dynamic*". From a formal juridical perspective, sharia banking regulations were initially regulated in law Number 7 of 1992 concerning Banking (Indonesia, 1992). This law recognizes the existence of banks that operate according to principles profit sharing for both commercial banks and BPRS. This law was then detailed again in PP Number 72 of 1992 concerning Banks Based on Profit Sharing Principle (Indonesia, 1992).

The product of this law was also more or less influenced by the socio economic dynamics at that time. Not only conditions at home, but also abroad. The World Conference of Islamic Countries, 21-27 April 1969 had a positive impact in the form of the development of Islamic banks or sharia banks in various countries. The development of the sharia economic system was empirically recognized with the birth of the Islamic Development Bank (IDB). In Indonesia, on the initiative of the Indonesian Ulema Council together with Muslim entrepreneurs since 1992, a sharia bank has been operating, namely Bank Muamalat Indonesia (BMI), whose operational

system refers to the Law No. 7 of 1992 concerning Banking and PP No. 72 of 1992 concerning Profit Sharing Banks. In 1998, Republic of Indonesia Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking. Legally, sharia banking has been recognized as a national banking subsystem. In the midst of the dynamics of growth and development of sharia financial institutions, in 1997 the economic crisis hit and devastated the national banking system. Among the sharia financial institutions that are developing rapidly amidst the ailing banking system are sharia banks, BPRS, and BMT. Sharia banks develop side by side with conventional banks. This is proven by the emergence of Bank BNI Syariah, Bank Mandiri Syariah, Bank Bukopin Syariah, Bank Danamon Syariah, BII Syariah. Apart from that, micro sharia financial institutions also developed, operating in the lower economic circles, which coincided with the establishment of the Indonesian Muslim Scholars Association (ICMI), which then initiated the formation of BMT under the auspices of the Salman Mosque, Bandung Institute of Technology (ITB). Thus it can be concluded that the ratification of Republic of Indonesia Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking is a social demand, namely the spread of sharia banking.

Law No. 10 of 1998 recognizes the existence of sharia banks and conventional banks and allows conventional banks to open sharia branch offices. The term mentioned to replace banks with profit sharing principles is banks based on sharia principles. In Law No. 10 of 1998 in Article 1 point 3, it is stated that the definition of sharia principles is the rules of agreements based on Islamic law between banks and other parties for the storage of funds, and/or financing of business activities, or other activities which are stated to be in accordance with sharia. This law also states that a number of contracts are stated to be in accordance with sharia principles, including financing based on the principle of profit sharing (*mudharabah*), financing based on capital participation (*musyarakah*), the principle of buying and selling goods with a profit (*murabahah*), or financing of goods. capital based on the principle of pure rental without choice (*ijarah*), or with the option of transferring ownership of the goods rented from the bank by another party (*ijarah wa iqtina'*).

After the 1998 Law was passed, MUI formed DSN-MUI in the same year. Since its founding until 2022, DSN-MUI has emit 88 *fatwa* about sharia banking. The peak of *fatwa* products related to sharia banking was in the interval from 2000 to 2002. In 2000, 16 *fatwa* were issued, this had decreased in 2001, namely only one *fatwa* was issued, but in 2002 it increased again by issuing 14 *fatwa*. According to research conducted by Eja Armaz Hardi, DSN-MUI *fatwa* in this position responds to the 1998

law. A number of *fatwa* related to fund collection and fund distribution contracts have been mentioned in the 1998 Law (Hardi, 2019). For example, the technical application of *wadi'ah* contracts in sharia banking products is *wadi'ah giro*. In Law No. 10 of 1998 Article 1 paragraph 6, it is stated that *wadi'ah giro* is a Rupiah giro account whose funds can be withdrawn at any time using checks and/or giro bills, other means of payment orders, or book transfers. In DSN-MUI *Fatwa* No: 1/DSN-MUI/IV/2000 regarding Giro.

Along with the issuance of the law and a number of DSN-MUI *fatwa*, sharia banks experienced significant growth. Seeing this significance, in 2008 the government and DPR issued Law No. 21 of 2008 concerning Sharia Banking (Indonesia, 2008). Law No. 21 of 2008 also emphasizes that the institution that has the authority to issue *fatwa* that comply with sharia principles is the MUI through the DSN-MUI. Looking at the dynamics of government regulations and legal politics in the implementation of sharia economics in Indonesia, it can be concluded that the role of government legal politics has been very positive and has had a big influence on sharia economic growth in Indonesia (Hasnita, 2012). Research conducted by Ayuk Wahdanfiari Adibah also concluded that the formation of Law No. 21 of 2008 concerning Sharia Banking was motivated by three things, namely changes in the Islamic political paradigm in Indonesia, changes in the legal system in Indonesia after reform and the strong existence of Islamic law in the development of legal politics in Indonesia. The change in the Islamic political paradigm in Indonesia began with the socio political conditions in Indonesia after the reform era which showed the existence of a democratic political configuration. This change greatly influenced the legal system in Indonesia, both directly and indirectly on the existence of Islamic law in the development of legal politics in Indonesia (Adibah, 2016). This positivity regarding sharia banking proves that Islamic law has become a source of national law and has the opportunity to contribute optimally to the development of national law in the future (Itmam, 2019).

Conclusion

Based on the description above, the following can be concluded. External factors, both *mustafti*, PBI, POJK, and PMA KHES did not influence the pattern of DSN-MUI 2000-2022 *fatwa* on sharia banking under study. On the other hand, DSN-MUI *fatwa* are absorbed in PBI, POJK, and KHES in sharia contracts. PBI absorption of DSN-MUI *fatwa* studied 21,05% (8 PBI) of the total 38 PBI, absorption of DSN-MUI *fatwa* studied in POJK 15,00% of 40 POJK and absorption of DSN-MUI *fatwa* studied in PMA KHES

in Book II reached 65,51%. The 2000-2022 DSN-MUI *fatwa* on sharia banking studied has a strong relationship with legislation related to sharia banking. A number of contracts used in *fatwa* related to the contract of raising funds and distributing funds have been mentioned in Law of the Republic of Indonesia No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 concerning Banking. But in substance the mention of these contracts is still in a general form, mentioning general principles, and definitions. The pattern of DSN-MUI *fatwa* in 2000-2022 concerning sharia banking based on the sample of *fatwa* studied predominantly used the *manhaji* approach (21 *fatwa* or 67,7%), followed by *qath'i* and *bayani* (6 *fatwa* or 19.4%), and *qath'i* approach (2 *fatwa* or 6,45%). There are 2 *fatwa* (6,45%) that are irrelevant between the arguments used and the *fatwa* substance, namely DSN-MUI *Fatwa* No. 31/DSN-MUI/VI/2002 concerning Debt Transfer, DSN-MUI *Fatwa* No. 64/DSN-MUI/XII/2007 concerning Bank Indonesia Syariah *Ju'alah* Certificate.

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