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iMalikah Al-Husnayain**

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UNIVERSITY OF DARUSSALAM (UNIDA)
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Department of Islamic Economic Law, Faculty of Sharia
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Jl. Raya Siman Ponorogo, Telp. (0352) 483762, Fax. (0352) 488182
Ponorogo, Jawa Timur, Indonesia
Email: aliktisab@unida.gontor.ac.id

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Table of Content

The Strategic Role of DSN-MUI in Developing Islamic Economic Law	1
<i>Nur Sillaturohmah Handayani, Muhamad Subhi Apriantero, Malikah Al-Husnayaini</i>	
Juridical Fundamentals for the Establishment of Islamic Banking Law in Indonesia	27
<i>Fitria Dewi Navisa</i>	
The Concept of Sharia Compliance on Islamic Bank Murabaha Financing in the <i>Maqashid Sharia</i> Approach: A Theoretical Study.....	49
<i>Nurul Faizin, Royyan Ramdhani Djayusman</i>	
The Sources of Islamic Law on the <i>Muamalah</i> Concept About Contract Viewed on Philosophical Studies	75
<i>May Shinta Retnowati, Musta'an Al Faruqi, Syahrul Ihsan</i>	
The Analysis of the Development of Islamic Economic System in Europe with the Increasing Capacity of Muslims as a Minority	95
<i>Mohammad Ghozali, Mualimin Mochammad Sahid, Muchamad Zainur Rohman</i>	
Discussion on Cash Waqf: Perpetuity, Legal Aspect, and Scheme of Investment Between Madzahib and Islamic Scholars	113
<i>Ahmad Fanani, Muhamad Abduh</i>	

The Strategic Role of DSN-MUI in Developing Islamic Economic Law

Nur Sillaturohmah Handayani

(Corresponding Author)

University of Muhammadiyah Surakarta, Indonesia

Email: o200220008@student.ums.ac.id

Muhamad Subhi Apriantoro

University of Muhammadiyah Surakarta, Indonesia

Email: muhamad.subhi@ums.ac.id

Malikah Al-Husnayaini

International University of Africa, Africa

Email: malikahusna0907@gmail.com

Abstract

This research aims to demonstrate the various strategic roles that can be implemented by DSN-MUI in developing Islamic economic law. The research method used is a descriptive qualitative analysis of written references, such as jurisprudence books, journals, and documents (also known as literature studies or literature research). The results showed that DSN-MUI has a strategic role as a supervisor, advisor, catalyst, supporter, marketer, and player in developing Islamic economic law in Indonesia theoretically-normatively and practically-applicatively. The role of DSN-MUI is very strategic to support and develop Islamic economic law in Indonesia to fulfill the public's need for legal fatwa's for economic activities in product innovation that continues to develop in global competition. DSN-MUI fatwa's are a reference and guideline for Islamic financial institutions, Islamic tourism, Islamic hospitals, and other Islamic industries to carry out economic activities with appropriate Islamic principles and Islamic law regulations. BI, as a national institution with authority in the banking sector, has given legitimacy to the DSN-MUI and its legal products. The committee oversees Islamic banks, LKS, insurance, venture capital, mutual funds, and others. In Indonesia, DSN-MUI catalyzes economic development and the Islamic financial industry, returning society to its original, especially in trade, investment, agriculture, and other economic activities following Islamic law regulations.

Keywords: Strategic Role; DSN-MUI; Islamic Economic Law

Abstrak

Penelitian ini bertujuan untuk menunjukkan berbagai peran strategis yang dapat dilakukan oleh DSN-MUI dalam mengembangkan hukum ekonomi syariah. Metode penelitian yang digunakan adalah analisis kualitatif deskriptif terhadap referensi tertulis, seperti buku-buku fiqh, jurnal, dan dokumen (disebut juga studi literatur atau penelitian kepustakaan). Hasil penelitian menunjukkan bahwa DSN-MUI memiliki peran strategis sebagai pengawas, penasihat, katalisator, pendukung, pemasar, dan pemain dalam mengembangkan hukum ekonomi syariah di Indonesia secara teoritis-normatif dan praktis-aplikatif. Peran DSN-MUI sangat strategis untuk mendukung dan mengembangkan hukum ekonomi syariah di Indonesia untuk memenuhi kebutuhan masyarakat akan fatwa hukum kegiatan ekonomi dalam inovasi produk yang terus berkembang dalam persaingan global. Fatwa DSN-MUI menjadi acuan dan pedoman bagi lembaga keuangan syariah, pariwisata syariah, rumah sakit syariah, dan industri syariah lainnya untuk menjalankan kegiatan ekonomi dengan prinsip syariah yang sesuai dan aturan hukum Islam. BI, sebuah lembaga nasional yang memiliki otoritas di bidang perbankan, telah memberikan legitimasi terhadap DSN-MUI dan produk hukumnya. Komite tersebut membawahi bank syariah, LKS, asuransi, modal ventura, reksadana, dan lain-lain. Di Indonesia, DSN-MUI mengkatalisasi perkembangan ekonomi dan industri keuangan syariah, mengembalikan masyarakat ke kondisi semula, terutama dalam perdagangan, investasi, pertanian, dan kegiatan ekonomi lainnya sesuai dengan aturan hukum Islam.

Kata Kunci: Peran Strategis; DSN-MUI; Hukum Ekonomi Syariah

Introduction

Islamic teachings have a comprehensive and universal concept.¹ Allah Swt. passed it down. In addition to his instructions covering the creed, Islamic law, and morals, it regulates all dimensions of human life related to the world and the hereafter. Problems in education, politics, society, and economics are one of the discussions that must be connected to Islam.² Studying Islamic law also never separates the study and understanding of Islam itself.³

¹Ady Ferdian Noor et al., "The Multicultural Education Paradigm Pattern: A Case Study in Muhammadiyah Junior High School in Palangka Raya Indonesia," *Perspektifv Nauki I Obrazovania* 52, no. 4 (2021): 300, <https://doi.org/10.32744/pse.2021.4.19>.

²Sandra Leonara Obregon et al., "Religiosity, Spirituality, and Work: A Systematic Literature Review and Research Directions," *Journal of Business Ethics* 179, no. 1 (2022): 576, <https://doi.org/10.1007/s10551-021-04856-7>.

³Muhammad Ayub, *Understanding Islamic Finance* (Jakarta: PT Gramedia Pustaka Utama, 2009), 87.

Islamic economic is a human activity to meet their daily needs by utilizing various favors and natural wealth bestowed by Allah Swt. following sharia principles.⁴ Various problems related to the economic activities of this community continue to develop and are increasingly complex.⁵ The study and implementation of the Islamic economy in multiple countries, including Indonesia, have colored several economic sectors, ranging from the Islamic financial industry to non-Islamic finance. The emergence of Islamic economic activities in this country has occurred since 1911, with the establishment of the Islamic trading company as an organization that at that time was initiated by business people and Muslim figures.⁶ Then in 1992, Bank Muamalat Indonesia was established as the first bank in Indonesia with sharia principles as a pioneer in establishing an Indonesian Islamic banking. This is a significant momentum in the country's history of Islamic economic development. In 1998, public bodies and the House of Representatives refined the law into Regulation Number 10 of 1998, specifically for using dual banking for Islamic banking.⁷

The dual banking system is a great opportunity for conventional banks to develop new businesses and products following sharia regulations.⁸ Indonesian banking players welcomed this opportunity. Since then, the Islamic financial business in the country has achieved promising achievements and progress in various aspects, both institutions, supporting infrastructure, regulatory tools, supervision systems, and public literacy of Islamic financial services. The

⁴Timur Kuran, "The Economic Ascent of the Middle East's Religious Minorities: The Role of Islamic Legal Pluralism," *The Journal of Legal Studies* 33, no. 2 (2004): 478, <https://doi.org/10.1086/422707>.

⁵Muhamad Subhi Apriantoro et al., "Stock Investment with Scalping Trading Method in Islamic Law Perspective," *Al-Iktisab: Journal of Islamic Economic Law* 6, no. 2 (2022): 121, <https://doi.org/10.21111/al-iktisab.v6i2.8269>.

⁶Ahyar Ari Gayo and Ade Irawan Taufik, "Kedudukan Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Dalam Mendorong Perkembangan Bisnis Perbankan Syariah (Perspektif Hukum Perbankan Syariah)," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 1, no. 2 (2012): 260, <https://doi.org/10.33331/rechtsvinding.v1i2.100>.

⁷Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori Ke Praktik* (Depok: Gema Insani, 2001), 36.

⁸M Mutamimah and Pungky Lela Saputri, "Corporate Governance and Financing Risk in Islamic Banks in Indonesia," *Journal of Islamic Accounting and Business Research* 14, no. 3 (2023): 439, <https://doi.org/10.1108/JIABR-09-2021-0268>.

international world recognizes Indonesia's Islamic financial system is one of the best and most complete. So that in 2021, several critical moments occurred related to this development, including on February 1, 2021, the state-owned Islamic business unit launched Bank Syariah Indonesia (BSI) as a result of the merger of three Islamic banks, namely BNI Syariah, BRI Syariah, and Bank Syariah Mandiri. *Halal* Product Guarantee Regulation (JPH) derived from Law Number 33 of 2014 is here to strengthen this. Law Number 11 of 2020 concerning Job Creation was also issued to support the acceleration and expansion of *halal* certification services. The *halal* brand was finally issued in one state-owned logo on January 25, 2021, to strengthen mutual solidity in all activities related to the Islamic business in Indonesia. With support from various parties, firms in the Islamic economy, especially in Islamic Financial Institution (LKS), can develop significantly along with other economic systems in the country. The Indonesian government has grand aspirations and hopes to make this country the center of the world's Islamic business and industry by 2024. This hope is certainly a motivation for us to improve ourselves and society so that we can participate in becoming human resources for the Islamic financial industry both now and in the future.⁹

The development of Islamic banks, as well as other Islamic Financial Institution (LKS) such as *Baitul Maal wa Tamwil* BMT and the like, is inseparable from the role of scholars, entrepreneurs, and the public who are concerned with spreading the wings of *da'wah* through the Islamic economy, particularly scholars and economists under the regulation of the DSN-MUI who continue to strive to roll out related *fatwa's* to develop both theoretical-normative and practical-applicable Islamic economic law.¹⁰

In this case, it is urgently necessary to support a system that carries out supervision, monitoring, direction, and development

⁹Mansur Efendi, "Perkembangan Ekonomi Syariah Di Indonesia," Fakultas Syariah UIN Raden Mas Said Surakarta, 2019, <https://syariah.uinsaid.ac.id/perkembangan-ekonomi-syariah-di-indonesia/>.

¹⁰Soliha Sanusi and Muhammad Hakimi Mohd Shafiai, "The Management of Cash Waqf: Toward Socio-Economic Development of Muslims in Malaysia," *Jurnal Pengurusan* 43, no. 1 (2015): 3, <https://doi.org/10.17576/2015-43-01>.

to capitalize on opportunities for the growth and development of the Islamic economy in Indonesia so that all product and legal developments related to the Islamic economy can continue to follow sharia provisions and regulations. This new development is both an opportunity and a challenge for everyone to contribute more effectively in the future. Moreover, official institutions that receive legal legitimacy from regulators, such as the DSN-MUI, must be more influential.¹¹

Methodology

The research methodology employed in this study is descriptive qualitative analysis.^{12 13 14} This approach involves collecting and analyzing data through literature studies or library research, utilizing written references such as *fiqh* books, journals, and documents. The researchers gathered primary and secondary sources from various documents related to the development of Islamic commercial law in Indonesia, including *fiqh* books and literature. To analyze the collected material, the first step was to document all the relevant material required for the research. The researchers then searched for regulations and other literature related to the study's subject matter. Additionally, the analysis included an examination of DSN-MUI, a *fatwa* institution that plays a crucial role in developing Islamic business law and supporting Indonesia's Islamic economic development. The study highlights the importance of further maximizing DSN-MUI's role in developing Islamic commercial law.

¹¹Yasushi Suzuki and Mohammad Dulal Miah, eds., *Dilemmas and Challenges in Islamic Finance: Looking at Equity and Microfinance* (London: Routledge, 2018), 126, <https://doi.org/10.1201/9781315105673>.

¹²Devid Frastiawan Amir Sup, "Koperasi Syariah Dalam Perspektif Regulasi Dan Fatwa Di Indonesia," in *Peran Fatwa MUI Dalam Perubahan Sosial: Fatwa Majelis Ulama Indonesia Dalam Pandangan Akademisi* (Jakarta: Sekretariat Komisi Fatwa Majelis Ulama Indonesia, 2022), 219.

¹³Devid Frastiawan Amir Sup, "The Concept of Islamic Fintech Lending in the Perspective of Regulation and Fatwa in Indonesia," in *Islamic Fintech (Present and Future)* (Ponorogo: UNIDA Gontor Press, 2022), 187.

¹⁴Devid Frastiawan Amir Sup, "Regulasi Pariwisata Halal Di Indonesia," in *Potensi Pariwisata Halal Di Indonesia* (Deli Serdang: Az-Zahra Media Society, 2023), 50.

Results and Discussion

DSN-MUI Profile

The majority of Indonesia's population is Muslim. Therefore, the existence of an institution that houses the *zua'ma* and *alim* Muslim clerics to discuss and find solutions to people's problems, especially Islam, is very urgent. It was against this background that on 7 Rajab 1395 H, coinciding with July 26, 1975, a meeting was held which was attended by *zu'ama* and *alim ulama* from various regions who agreed to form a forum called the Indonesian Ulama Council (MUI).¹⁵

As a forum for the deliberations of scholars, the MUI has many challenging tasks in solving various problems that arise in society. In implementing these duties, the MUI took the initiative to establish a commission, a *fatwa* commission, *ukhuwwah Islamiyah*, and a proselytizing commission. The MUI *fatwa* commission is tasked with researching issues and problems in society and formulating and issuing relevant *fatwa's* as solutions. As people's needs for economic *fatwa's* continued to grow, in 1998, the MUI had a particular policy to establish a National Sharia Council, which became known as the DSN.

DSN-MUI is a council of Islamic scholars in Indonesia that provides *fatwa's* or legal opinions related to Islamic law. DSN-MUI comprises renowned scholars with expertise in Islamic law, Islamic economics, and Islamic finance. The council plays a crucial role in ensuring that sharia-based practices and products in Indonesia are in accordance with Islamic teachings and do not cause doubts among Muslims. DSN-MUI has been actively issuing *fatwa's* on various issues related to the lives of Indonesian people, including Islamic banking, Islamic insurance, *halal* products, and more. The *fatwa's* issued by DSN-MUI serve as a legal basis for sharia-based practices and products in Indonesia. They are highly respected and followed by many companies and government agencies. DSN-MUI's role in setting standards for *halal* products in Indonesia is particularly significant. The council's *halal fatwa's* is a reference for producers

¹⁵Lena Rethel, "Economic Governance Beyond State and Market: Islamic Capital Markets in Southeast Asia," *Journal of Contemporary Asia* 48, no. 2 (2018): 304, <https://doi.org/10.1080/00472336.2017.1404119>.

and stakeholders to ensure their products adhere to *halal* principles. Given the council's influential role in shaping the lives of Indonesian Muslims, its decisions must consider the interests of the broader Muslim community. DSN-MUI must also adapt to changing times and challenges to provide relevant *fatwa*'s and legal opinions that align with the context of Indonesian society. DSN-MUI is a crucial institution that plays a vital role in maintaining the integrity and authenticity of Islamic practices and products in Indonesia.

The council's contributions in guiding Islamic law and ensuring that sharia-based practices and products adhere to Islamic teachings have helped build trust and confidence among Muslims in Indonesia. The council's efforts in setting standards for *halal* products have also helped promote Indonesia's reputation as a *halal* hub and attract more investments in the country's *halal* industry.

However, DSN-MUI has also faced criticisms, particularly regarding the transparency of its decision-making process, and the inclusivity of its members. Some have argued that the council's composition is dominated by conservative scholars, which may limit the diversity of perspectives in its decisions.

To address these issues, DSN-MUI has taken steps to increase transparency in its decision-making process and engage with a broader range of stakeholders, including government agencies, business associations, and consumer groups. The council has also established a system for reviewing its *fatwa*'s to ensure their relevance and accuracy.

In conclusion, DSN-MUI is essential to Indonesia's Islamic landscape. While it has faced criticisms, the council's contributions to promoting Islamic law and practices in the country have been significant. As the country continues to face new challenges and changes, DSN-MUI must remain relevant and inclusive in its decisions to continue serving the interests of Indonesian Muslims.

This council deals explicitly with Islamic economic *fatwa*'s. In addition, it is also tasked with overseeing the implementation of the economic activities of financial institutions as a whole, including Islamic banks that continue to grow.¹⁶ In addition to acting as a

¹⁶Bank Indonesia, *Petunjuk Pelaksanaan Pembukaan Kantor Bank Syariah* (Jakarta:

supervisor and advisor, DSN-MUI is also expected to be a supporter, marketer, and player in Islamic economic activities in the country. DSN-MUI will serve as a coordination forum for scholars who are very strategic in responding to economic and financial problems following the needs of the times.¹⁷

The birth of DSN-MUI and its *fatwa's* received legitimacy from Bank Indonesia (BI) as stated in the Decree of the Board of Directors of Bank Indonesia Number 32/34/1999. The decree states that Islamic banks must refer to *fatwa's* issued by the DSN-MUI in its operations. Furthermore, if they have a new product for which there is no relevant DSN-MUI *fatwa*, they must consult and seek consideration and approval from the DSN-MUI as written in Article 31 of the decree.¹⁸

According to Syafi'i Antonio, besides DSN-MUI having the primary function as a supervisor in supervising old and new products rolled out by Islamic Financial Institution (LKS) from deviations, DSN-MUI also has an essential task of making guidelines based on sharia products that follow Islamic law. This guide then serves as the basis for supervision for the Sharia Supervisory Board (DPS) of Islamic banks and Islamic Financial Institution (LKS) in carrying out business and developing sharia products that remain sharia and are relevant to the challenges of the times.

Duties and Authorities of DSN-MUI

Important tasks owned by DSN-MUI related to Islamic economic activities include, *first*, developing the implementation of sharia principles in business, especially those engaged in finance and banking. *Second*, formulate and make *fatwa's* related to economic activities and businesses, especially in finance and banking. *Third*, develop and make *fatwa's* related to innovative Islamic services and financial products. *Fourth*, control of the supervision of implementing

Bank Indonesia, 1999), 36.

¹⁷Moh. Mufid, *Ushul Fiqh Ekonomi Dan Keuangan Kontemporer* (Jakarta: Kencana, 2021), 83.

¹⁸Mohammad Zamroni, "Peran DSN-MUI Dalam Kegiatan Perbankan Syariah," *Tasyri': Jurnal Tarbiyah - Syari'ah Islamiyah* 25, no. 1 (2018): 48, <http://ejournal.kopertais4.or.id/pantura/index.php/tasyri/article/view/3560>.

fatwa's socialized through DPS.¹⁹

In addition to the above duties, *first*, DSN-MUI also has the authority and power to issue *fatwa's* that are binding on DPS to LKS and make it a legal guide for all relevant parties. *Second*, issuing *fatwa's* that serve as guidelines or references for government regulations, such as the Ministry of Finance and Bank Indonesia. *Third*, propose worthy personnel or names that meet the verification to become DPS members at LKS in Indonesia. *Fourth*, presenting experts to provide *tashawwur* on a problem related to the Islamic economy, such as monetary problems, including authorities in the country and abroad. *Fifth*, issue a warning letter to banks or LKS that deviates from the DSN-MUI provisions. *Sixth*, submit proposals and recommendations to the government to decide if the warnings issued by the DSN-MUI are not heeded.²⁰

DSN-MUI Strategic Role as a Islamic Economic Law Fatwa Institution

In banking issues or other LKS in Indonesia, Islamic economic activities experienced a remarkable increase. This condition is undoubtedly due to the support of DSN-MUI *fatwa's*. These *fatwa's* serve as a guarantee of legal certainty as well as the primary reference in Islamic business, Islamic industry, and other business units in Islamic economic activities for all parties, be it practitioners, the public, or the government, be it those who have the status of stakeholders in the Islamic financial business.²¹ As a legal *fatwa* institution with authority recognized by law, in this case, DSN-MUI has a strategic position in developing the Islamic economy and its laws in Indonesia, and the roles of DSN-MUI in this regard are as follows.

First, as a supervisor. DSN-MUI is an external supervisor of Islamic banks and other financial institutions in national Islamic economic institutions. DPS, the internal supervisor of a bank or financial institution, technically assists in such roles and responsibilities. Because transactions carried out in Islamic banks

¹⁹DSN-MUI, *Himpunan Fatwa DSN-MUI* (Jakarta: DSN-MUI dan Bank Indonesia, 2003), 58.

²⁰DSN-MUI, *Himpunan Fatwa Keuangan Syariah* (Jakarta: Erlangga, 2014), 5.

²¹Toha Andiko, "Signifikansi Implementasi Konsep Ekonomi Islam Dalam Transaksi Bisnis Di Era Modern," *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi, Dan Keagamaan* 4, no. 1 (2017): 12, <https://doi.org/10.29300/mzn.v4i1.1004>.

and other LKS must adhere to the principles and laws of the Islamic economy. Therefore, in addition to issuing *fatwa's*, DSN-MUI and DPS are tasked with ensuring that Islamic banks and other LKS adhere to sharia provisions in raising funds and financing activities.

Since the enactment of Law Number 21 of 2008 related to Islamic Banking, in carrying out business, stakeholders must be guided by the rules and regulations written in it. DSN-MUI is assisted by DPS, an internal supervisor in LKS whose task is to provide reports to ensure sharia compliance and its implementation in its management and systems.²²

After the DSN-MUI has read and reviewed the DPS report on implementing economic activities at banks and other LKS, the DSN-MUI has the right to reprimand LKS for committing irregularities. If the reprimand is not heeded, then the DSN-MUI can provide recommendations to the competent authorities, such as Bank Indonesia and the Ministry of Finance, to give and punish the company/financial institution.²³

The position of the DPS is further emphasized in Bank Indonesia Regulation Number 11/2/PBI/2009 (PBI), which mandates that all commercial banks with Islamic business units in them are required to have DPS whose duties are to monitor sharia compliance institutions as well as advise the board of directors and monitor sharia compliance. Meanwhile, in Law Number 21 of 2008 related to Islamic Banking, it was explicitly mentioned to appoint DPS as a recommendation from MUI in the general meeting of shareholders. Because of this, it can be said that the DSN-MUI is the only institution with the task of providing Islamic economic *fatwa's* and other LKS.²⁴

Through its *fatwa's*, DSN-MUI also functions as a *fatwa* institution that protects Indonesian Muslims from Islamic business practices implemented in other countries but is irrelevant to the

²²Rizkya Lutfi Amalin, "Fungsi Al-Qawa'id Al-Fiqhiyah Dalam Pengembangan Fiqh Muamalah Kontemporer (Analisis Terhadap Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Tentang Pasar Modal Syariah)" (IAIN Ponorogo, 2017), 42, <http://etheses.iainponorogo.ac.id/2218/>.

²³Rahmat Ilyas, "Peran Dewan Pengawas Syariah Dalam Perbankan Syariah," *JPS (Jurnal Perbankan Syariah)* 2, no. 1 (2021): 45, <https://doi.org/10.46367/jps.v2i1.295>.

²⁴M. Cholil Nafis, *Teori Hukum Ekonomi Syariah* (Jakarta: UI-Press, 2011), 38.

conditions of Indonesian society. This attitude is reflected in DSN-MUI decisions regarding *inah's* buying and selling practices, for example. Islamic banks in various countries have enforced this transaction practice for decades. A transaction is known as *bai al-inah* or resale. In this transaction, the seller sells non-cash commodities to the buyer. Then the seller repurchases them directly from the buyer at a lower price. The buyer gets cash, and the item remains the seller's property. The buyer will make installments according to the agreement in the sale and purchase agreement carried out at the beginning of the process. The bank implements Islamic banking transactions by selling commodities to customers in installments, after which the bank repurchases them in cash at a price below it. Thus customers can get cash while the bank has receivables from it. The customer will pay the bank in installments.²⁵

On the other side, *tawarruq* is a type of non-cash buying and selling transaction between two parties, and then the buyer sells the item to a third person in cash at a lower price to get money. The goods belong to a third party as the second purchaser. The first seller has receivables from the first buyer that will be returned in installments. The implementation of this transaction is applied to Islamic banks in several countries. Where the status of the customer in this transaction is as the first buyer, the Islamic bank is the first seller, and the third party or second buyer is the vendor who cooperates with the bank. The interbank money market is another common place for this type of transaction. Among the *ulama madzhab*, there is a controversy about the law of *inah* buying, selling, and bargaining. Transactions like this are similar to accounts receivable with usury contracts, except that they are carried out with buying and selling contracts. As a form of *ihtiyat* (caution) towards the existence of an element of usury in this kind of transaction practice, DSN-MUI adheres to the opinions of scholars who prohibit both types of transactions, so that both are not applied in Indonesia.²⁶

Second, as an advisor. In Islamic societies, clerics are essential in directing them in their shari'a livelihood. *Ulama* is not only a

²⁵Mufid, *Ushul Fiqh Ekonomi Dan Keuangan Kontemporer*, 86.

²⁶*Ibid.*, 87.

figure who is considered an expert in the field of sharia but also a motivator and dynamic actor who inspires the community to be more advanced and developed. The behavior of scholars has always been an example to follow. Their remarks are exemplary in life. Because of his charisma, the scholars served as torches of the people. Some even stated that people could only be good with the existence of credible clerics as well as good government. Scholars significantly influence society's acceptance or not of an idea, concept, or program. Scholars' excellence and academic abilities motivate them to actively help, direct, and guide the community daily. *Ijtihad* and the intellectual work of the scholars led to the innovation of the conceptual Islamic economic system, which included the banking system and other LKS. This is, of course, due to the help and '*inayah*' of Allah Swt.

As a legal institution consisting of scholars, DSN-MUI serves as an advisor by offering guidance, motivation, ideas, and recommendations for creating fresher Islamic financial products and services to compete globally. The presence of the DSN-MUI *fatwa* is a good view of the development of Islamic finance and a tool for estimating the progress of Islamic finance in Indonesia. In short, Islamic economic *fatwa*'s technically present a model of development and rebirth of the concept of *mu'amalah maliyah* jurisprudence. DSN-MUI *fatwa* has the purpose of *tabyin wa taujih*. *Tabyin* is explaining the law as a rule of thumb on LKS, especially those needed by performers and players. While *taujih* includes educating the public about Islamic economic norms and providing instructions.²⁷

As an advisor, at least DSN-MUI has various roles that can be performed in: (1) Socializing, to explain to the general public about the *mu'amalah maliyah*, which must be re-promoted following the provisions in the Al-Qur'an and Al-Hadith. Although most of these people have long studied and practiced this knowledge, many activities still exist and contain *haram* elements such as usury, *maysir*, *gharar*, and other business transactions violating Islamic law. Islamic banking, Islamic insurance, Islamic leasing, Islamic capital

²⁷M. Zaidi Abdad, "Signifikansi Fatwa DSN-MUI Terhadap Perkembangan Ekonomi Syariah Di Indonesia," *Instinbath: Jurnal Hukum Dan Ekonomi Islam* 18, no. 2 (2019): 428, <https://istinbath.or.id/index.php/ijhi/article/view/177>.

market, Islamic cooperative, Islamic pawnshop, BMT, and Islamic multi level marketing business are examples of the actualization of *mu'amalah*. As an advisor, DSN-MUI also serves to remind the public that the teachings of the Islamic economy have benefits and have been proven accurate and accepted by the world since ancient times; (2) Implementing, it shows that the people's disregard for *muamalah* jurisprudence is one of the main causes of the current economic downturn. For example, in examining Al-Ghazali's book of *Ihya 'Ulumuddin*, most people focus only on Sufism and ignore its *mu'amalah* or economic aspects. So are countless books of jurisprudence. The priority of the theme of the study or Friday sermon in the mosque or *ta'lim* assembly only discusses the aspect of worship. Although some schools, such as Islamic boarding schools, teach *muamalah*, still limited to dogmatic and normative, they have not been developed in a way that is in accordance with current banking and financial applications. KH. Ali Yafie, former Chairman of the Central MUI, stated that Muslims' poverty and backwardness for eight centuries resulted from neglect of the teachings of *muamalah*;²⁸ (3) Building the Islamic economy, DSN-MUI is tasked with returning the community to its business *fitrah* state. The liberalization of banking has hurt this culture, polluting society with a culture of interests directly opposed to the nature of business and nature itself. Ironically, in the past, some clerics only allowed interest used in banking because of its powerlessness (sorry). The usual nature and nature of the business cannot be sure of finding success because a business can generate large, small, and even bankrupt profits. Meanwhile, the concept of business based on usury interest is sure to be successful, even though Allah Swt. clearly said in Al-Qur'an surah Luqman verse 34, "*One cannot know for sure how much business there will be tomorrow*". The cleric must give an explanation for this in writing and orally. In addition, the role of DSN-MUI in educating the general public about Islamic business practices such as usury, gambling, money games, fictitious investments, prostitution, and others is equally important. Non-Muslim scholars, including Greek philosophers, Islamic economists, and others, believe that doing business this way will not bring

²⁸Antonio, *Bank Syariah: Dari Teori Ke Praktik*, 39.

good fortune and happiness worldwide, especially in the afterlife. However, although most Indonesians are Muslims, quite a few still understand the Islamic economic and financial system. Some even issued statements that Islamic banks and LKS, such as BMT, are no different from “*sharia loan sharks*”, just different terms. Therefore, to safeguard the general public from such a change in thinking, one of the responsibilities of the DSN-MUI is to provide education and socialize the correct understanding.

Third, as a marketer. Through mass communication, socialization, community and networking development, and other strategic roles in community relations, DSN-MUI can become a strategic partner in developing Islamic economic law to realize a credible Islamic financial industry in quantity and quality. DSN-MUI is expected to be a preacher who not only deals with the issue of worship jurisprudence but also introduces sharia transactions, Islamic financial institutions, and their products. The public is then invited to emigrate to Islamic financial institutions to emulate the trading style of Prophet Muhammad Saw. by emphasizing four prophetic principles, *tabligh*, *shiddiq*, *amanah*, and *fathonah*. The four pillars must be interpreted with economic terms that the community can use.²⁹

DSN-MUI must explain to the public that the Islamic economic system has significant value, including the fundamental differences between the Islamic banking system and conventional banks that promise lucrative bank interest, as well as the need to emphasize that emigrating to Islamic banks is a necessity. The development of Islamic banking and Islamic financial products is a very crucial task for DSN-MUI because they are very competent and credible parties in the field of *fiqh muamalah*, such as in various kinds of buying and selling concepts such as *murabahah*, *salam*, *istisna'*, multiple kinds of *musyarakah* concepts such as *mutanaqishah*, *musytarakah*, and *mudharabah*, etc. In addition, DSN-MUI also contributes to the nation's economic sustainability through socialization and the growth of the Islamic economy. The nation's economy collapsed due to the economic crisis in the late 1990's due to policies based on the capitalist system that raised interest rates. However, it turns

²⁹Ibid., 40.

out that the approach makes banking problems worse. Because the interest paid is greater than the interest earned, the bank experiences a negative spread. All conventional banks were affected, and as a result, some were forced to liquidate.

In contrast, others could restructure in outstanding amounts (hundreds of trillions of Rupiah from the government in the form of liquidity assistance from BI. Donations to conventional banks significantly deplete the annual state budget. The state must bear almost 33% of the available budget to pay off the interest. This is why the Islamic system must be ready to replace the interest system. Suppose the scholars succeed in instilling confidence and trust in the community to return to sharia. In that case, improving the nation's economy through Islamic banking institutions can be an up-and-coming alternative.

In addition to the above roles, as a marketer of the Islamic economy, DSN-MUI also continuously disseminates the latest *fatwa's* to DPS in annual agendas such as National and Regional Pre-*Ijtima'* and *Ijtima Sanawi* which DPS from various Islamic banks and Islamic financial institutions attends. In addition, DPS is obliged to provide regular information to the management and managers of Islamic financial institutions regarding the development of Islamic business following their respective areas of supervision, which will then be disseminated to the general public. Furthermore, new products that follow the Islamic system must be sporadically socialized to the public to support efforts to develop Islamic economic law.

Fourth, as a supporter. The development of banks and other Islamic financial institutions urgently needs DSN-MUI support in network development, ideas, motivation, prayer, and others. The progress of the Islamic economy and finance industry in Indonesia depends primarily on the encouragement and stimulation of the DSN-MUI. It would be very positive if DSN-MUI invited people to embrace Islam comprehensively (*kaffah*), not partial or half. The Islamic *ummah* still demands the interest system in conventional banks, even though it is contrary to the Al-Qur'an. Islam *kaffah* can be achieved by making deposits or opening accounts in Islamic banks so we no longer use the capitalist economic system. DSN-MUI is

expected to be able to arouse the wider community to become a full-fledged Muslim through economic proselytizing, both in the field of *mu'amalah* and worship.

Fifth, as a catalyst. Similarly, in a broader sense, the term “*catalyst*” describes something that speeds up or triggers a process without being directly involved or affected by it. In this sense, a catalyst can be a person, event, or idea that stimulates or accelerates change or development in a particular field or context. In other words, a catalyst is a facilitator or agent that brings about change or progress in a system or situation.

In economics and finance, DSN-MUI plays a proactive role in responding to the development of Indonesian society. We are grateful that DSN-MUI has a quick response by drafting regulations on Islamic banks as an essential reference. All forms of aspirations and financial needs of the people must be responded to by DSN-MUI and formulated the concept together with other elements. In this case, DSN-MUI has three layers of infrastructure involved in the *fatwa* issuance process.³⁰ The first line of DSN-MUI infrastructure is specialist scholars in sharia. This line includes interpreters, Hadith experts, jurists, *ushul* jurists, *muamalahs*, and others. A total of 40 people with various scientific specialties were also placed in Daily Executive Agency (BPH) DSN-MUI. The second line comprises scholars who understand sharia with specializations in banking, economics, accounting, capital market, insurance and law. BI, OJK, the Indonesian Accounting Association, the Supreme Court, and *fatwa* requesters were also placed in it. In the body of BPH DSN-MUI, DSN-MUI also prepares an exceptional team ready to help build the correct paradigm (*tashawwur*). The paradigm (*tashawwur*) is intended to select problems according to their scientific fields, then convey easy-to-understand interpretations. This work is carried out jointly by sharia experts. The third line is the leadership element. This group will accept the formulation of a solution that has gone through such a process, which begins with a *fatwa* formulation by sharia experts and

³⁰Amalin, “Fungsi Al-Qawa’id Al-Fiqhiyah Dalam Pengembangan Fiqh Muamalah Kontemporer (Analisis Terhadap Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Tentang Pasar Modal Syariah),” 45.

field specialists, which then becomes the formulation of the solution. The leadership element will consider the results of the formulation of alternative solutions proposed. All will be seen in terms of benefits and *mudharat*. Then a *fatwa* was decided. It will take two months at the earliest to produce a *fatwa*. Strictly speaking, DSN-MUI will not conduct shopping *fatwa*'s because the *fatwa*'s issued can be the subject of research by various groups.

Sixth, as a participant and a user. In addition to the above roles, in Islamic economic activities, from the results of this study according to the author DSN-MUI also plays a role in economic activities. Members of the DSN-MUI can play the role of owners of financial or business institutions, be managers in the institution, or be investor customers in depository funds, partners, or customers of fund distribution and financing. DSN-MUI can participate in everything. This reality is evident because all DSN-MUI members are customers of Islamic banks or financial institutions who are also required to participate in its activities. They invite wealthy people, capital owners, or business people who are Muslims to support and use Islamic banking in their business. As a result, Islamic banking messages are increasingly widespread and in demand by all circles.³¹

DSN-MUI Fatwa as an Effort to Develop Islamic Economic Law

One of the functions of DSN-MUI is to research and give *fatwa*'s for products developed by Islamic financial institutions and other Islamic industries. *Fatwa* (plural: *fatawa*) etymologically means advice, recommendations, and solutions to legal questions. *Fatwa* also means *al-ifta*, a statement sourced from the *mufti* related to a law or a legal decree issued by a knowledgeable and deep in Islamic law.³² *Fatwa*, according to terminology, is a description of Islamic law in response to a problem submitted by someone who asks, either related to personal affairs or the general public.³³ The act of giving a *fatwa* is

³¹Anis Wahyu Andini, "Kaidah-Kaidah Fikih Dalam Fatwa Dewan Syariah Nasional MUI (Studi Analisis Terhadap Fatwa DSN MUI Tahun 2000-2021)" (Universitas Muhammadiyah Surakarta, 2022), 93, <https://eprints.ums.ac.id/105962/>.

³²Ibnu Manzur, *Lisan Al-'Arab Jilid 15* (Beirut: Dar Al-Sadr, 1956), 104.

³³Ahyar Ari Gayo, *Kedudukan Fatwa MUI Dalam Upaya Mendorong Pelaksanaan Ekonomi Syariah* (Jakarta: BPHN, 2013), 61.

called *futya* or *ifta'*, a term that also refers to the profession of giving advice. The person who gives the *fatwa* is called the *mufti* or cleric, while the person who asks for the *fatwa* is called *mustafti*.³⁴ Although *futya* is an independent profession, in various ways, not a few Muslim countries have become state authorities. The state functions imposed by the *futya* do not eliminate the personal conduct of the profession.

Ijtihad and *fatwa* are closely related. *Fatwa* is the product of *ijtihad* experts (*mujtahids* and *mufti*) to take or *istinbath* a rule. At the same time, the *fatwa* is a product of *ijtihad* itself. *Fatwa's* can be delivered orally or in writing. Concretely, *fatwa's* and *ijtihad's* will ensure that Islamic teachings spread rapidly worldwide while remaining firm and straightforward.³⁵

Several pieces of evidence indicate the order of *fatwa*, among which is found in the Al-Qur'an surah An-Nisa' verse 176, "*They asked you for a fatwa (about kalalah). Say, "Allah gives you a fatwa about kalalah, (i.e.) if a person dies and he has no children but has a sister, his share (his sister's) one-second of the property he left behind. As for his brother inheriting (the entire sister's estate) if he has no children. However, two-thirds of the property is left behind if the sister is two people. If they (the heirs consist of) several brothers and sisters, a brother's share is equal to the share of two sisters. God explained (this law) to you so that you would not get lost. Allah is all-knowing"*.

Besides, Allah Swt. commanded the Prophet Saw. to give a *fatwa* to a person who asked him. As the word of Allah Swt. in the Al-Qur'an surah An-Nisa verse 127, "*They ask thee (the Prophet Muhammad) for a fatwa about women. Say, "Allah gave you a fatwa about them, and what is recited to you in the Al-Qur'an about the orphaned women you did not give them, and the helpless children. (Allah has also given you a fatwa to care for the orphans fairly. Whatever charity you do, indeed, Allah is All-Knowing"*.

Based on the two verses above clearly shows that the position of the *fatwa* is essential and should not be ignored.³⁶ God also commands us to ask the expert if we do not know, as the word of Allah Swt. in the Al-Qur'an surah An-Nahl verse 43, "*We did not send before you (the*

³⁴Mufid, *Ushul Fiqh Ekonomi Dan Keuangan Kontemporer*, 89.

³⁵Gayo, *Kedudukan Fatwa MUI Dalam Upaya Mendorong Pelaksanaan Ekonomi Syariah*, 62.

³⁶Mufid, *Ushul Fiqh Ekonomi Dan Keuangan Kontemporer*, 90.

Prophet Muhammad), but rather the man whom We gave him a revelation. So, ask people who know if you don't know".

Fatwa is one of the *istinbath* methods of Islamic law. Some make *fatwa's* the source of the law itself. A *mufti* authorized to issue a *fatwa* must meet the conditions prescribed regarding insight and morals. According to Al-Qardhawi the specific criteria that a *mufti* should have are as follows.

First, intellectuality. A *mufti* must have intensive interaction and broad and comprehensive knowledge of the Al-Qur'an and Al-Hadith, he must be an expert in Arabic and its dialects, master the statements of jurists to know the laws and the process of taking *istinbath* (conclusion), know the agreed laws (*ijma' ulama*) and what is their attitude in the face of dissent, his knowledge of the state of *fuqaha* must be deep, understand *qiyas* and *illat*. All of this can be done by interacting with the *fuqaha* through their book works or words. Likewise, we must understand the reality of people's lives so that *fatwa* products are relevant to society.

Second, morality. A *mufti's* deeds should not contradict his knowledge. He must be between his deeds and feelings of fear of Allah Swt., as well as have praiseworthy morals and fear of Allah Swt.³⁷

In addition, a *mufti* must have broad scientific insights so that what he uses about a legal matter follows the truth. Furthermore, in giving, *fatwa's* should always be accompanied by the intention of solely seeking the pleasure of Allah Swt., not for interest such as rank, position, wealth, power, and so on. He must also be charismatic, patient, and able to control his emotions and ego. Furthermore, we often know them as the *alim ulama* in our country gathered in a forum called the Indonesian Ulema Council (MUI). This particular institution in handling *fatwa's* on *fiqih muamalah* (Islamic economy) in Indonesia is held by the National Sharia Council (DSN).

There *mufti* requirements proposed by As-Syaukani, namely being faithful, fair, and disciplined, and consistent in legal decisions. DSN-MUI has been referred to as a *fatwa* institution with intellectual

³⁷Akram Abdus Sattar Kasad, *Metode Dakwah Yusuf Al-Qardhawi*, ed. Muhyidin Mas Rida (Jakarta: Pustaka Al-Kautsar, 2010), 108.

authority because MUI is one of the institutions that applies the *ijtihad jama'i* (collective) method that has fulfilled the criteria and procedures.³⁸

Ijtihad and giving *fatwa's* (*al-ifta*) are the same thing. *Al-ifta* can be performed by individuals (*ijtihad fadiy*) or groups (*ijtihad jama'i*), according to scholars. Individual *ijtihad* is a type of *ijtihad* performed by an individual on a specific issue that usually concerns their interests. At the same time, a group *ijtihad* is performed by a group of experts on a particular topic that usually involves broad interests. DSN-MUI has issued many *fatwa* products as official *fatwa* institutions in Indonesia. *Fatwa* products issued by DSN-MUI related to Islamic industry activities, both banking and non-banking. Judging from the innovation and breakthrough of *muamalat* products in the modern era, this is a progressive development.³⁹

The legitimacy of the *ijtihad* method of this group is derived from the Al-Quran, Al-Hadith of the Prophet Muhammad Saw., the practice of the companions, and *tabi'in*. In the days of the Prophet, in the event of a problem, the companions were gathered by the Prophet Muhammad Saw. to be asked for his opinion. After the apostle's death, this collective *ijtihad* became a tradition and was preserved by the next generation, the companions and *tabi'in*. In today's era, collective *ijtihad*s are organized by international and national religious organizations through specialized forums. *Fatwa's* on sharia products and services issued by DSN-MUI are derived from the *ijtihad* results of Islamic scholars and economic experts who are members.

The progress of Islamic industry regulation in Indonesia is entirely satisfactory in meeting several operational optimization requirements of Islamic institutions. When the position of DSN-MUI *fatwa's* is compared with favorable legal provisions, especially Law Number 21 of 2008 concerning Islamic Banking. As the Financial Services Authority (OJK) becomes the center of planning, regulating, and supervising Islamic financial institutions, such progress is increasingly visible.

³⁸Soleh Hasan Wahid, "Karakteristik Fatwa Ekonomi Syariah Lembaga Fatwa Di Indonesia (DSN-MUI, Lembaga Bahth Al-Masa'il Nahdatul 'Ulama, Dan Majelis Tarjih Muhammadiyah)" (IAIN Tulungagung, 2016), 93, <http://repo.uinsatu.ac.id/6759/>.

³⁹Nafis, *Teori Hukum Ekonomi Syariah*, 41.

From 2013 to 2017, OJK issued 215 regulations, including 118 for Islamic banking, 74 for the Islamic capital market, and 23 for the Islamic non-banking financial industry. This shows how extensive Islamic financial regulations are and how far they have dealt with the operational problems Islamic financial institutions face. The massive development of the fatwa issued by DSN-MUI is very cloudy. The DSN-MUI has issued more than 125 *fatwa*'s related to Islamic financial institutions as of 2018.⁴⁰

DSN-MUI *fatwa* products determine transaction costs in LKS and capital markets in Islamic economic *fatwa*'s. DSN-MUI *fatwa* pattern is directed explicitly at economic institutions, including LKS, capital market, and monetary policy. Among them are deposits, *mudharabah*, *musyarakah*, *murabahah*, *salam*, *istishna'*, *ijarah*, debts, *hawalah*, *rahn*, Bank Indonesia Certificates, cards, money markets, Islamic insurance, Islamic capital markets, Islamic bonds, Government Securities, exports and imports, MLM, guarantees, and others.⁴¹

The establishment of DSN-MUI does have an essential purpose related to the development of the Islamic economy in Indonesia, as Kep-754/MUI/II/99 concerning the establishment of DSN-MUI.⁴²

Conclusion

The role and function of DSN-MUI must be connected to the rapid development of Islamic economic law in Indonesia. DSN-MUI *fatwa*'s become a reference and guideline for LKS and other Islamic financial industries to carry out economic activities following sharia provisions in addition to Islamic laws and regulations. DSN-MUI legitimacy and legal products come from BI. This state institution has the authority to support the growth of Islamic economic law in Indonesia in the banking sector. In addition to overseeing Islamic banks, the board also oversees insurance, mutual funds, venture

⁴⁰Fahrur Ulum, *Studi Ekonomi Syariah Dari Paradigma Hingga Penelitian Ekonomi Syariah* (Jakarta: Kencana Prenada Media Group, 2020), 142.

⁴¹Mufid, *Ushul Fiqh Ekonomi Dan Keuangan Kontemporer*, 93.

⁴²Wahid, "Karakteristik Fatwa Ekonomi Syariah Lembaga Fatwa Di Indonesia (DSN-MUI, Lembaga Bahth Al-Masa'il Nahdatul 'Ulama, Dan Majelis Tarjih Muhammadiyah)," 96.

capital, and other businesses. The Islamic economy and finance industry in Indonesia is encouraged and stimulated by the role of DSN-MUI as supervisor, advisor, supporter, catalyst, marketer, and player in developing Islamic economic law in Indonesia. They were socializing *fatwa's* to increase knowledge and insight into the field of Islamic economics, providing motives for the community to apply Islamic principles in *kaffah*, both in *worship* and *muamalah*, because Islam is a religion that has a comprehensive and universal concept. Thus, the existence of DSN-MUI also plays an essential role in restoring the business society that has existed since ancient times, especially in agriculture, trade, and investment, providing adequate protection to elements of Indonesian culture who intend to *hijrah* sharia in various fields by socializing *fatwa's* to strengthen knowledge and horizons in the field of Islamic economy. Suppose this strategic role is maximized and appropriately optimized. In that case, DSN-MUI can contribute to spreading the wings of economic proselytizing, especially in developing Islamic economic law in the country.

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Juridical Fundamentals for the Establishment of Islamic Banking Law in Indonesia

Fitria Dewi Navisa

(Corresponding Author)

University of Islam Malang, Indonesia

Email: navisa@unisma.ac.id

Abstract

The existence of Islamic banks is a sign of the revival of the Islamic economy in Indonesia, especially since Indonesia is a country where the majority of its people are Muslims. So, the existence of Islamic banking in Indonesia should become an important matter because it is related to the establishment of the people's economy, moreover, Indonesia is a legal state that binds all activities and rules in legal writings that are ratified and agreed upon. This research was conducted to answer about the importance of the legal foundations of the establishment of Islamic banking law in Indonesia. This research method use a normative juridical approach. Legal research with this approach is oriented toward the norms contained in the legislation. The results is, the formal position of Islamic banking law in Indonesia is said to be strong from a juridical point of view, even in line with the position of other conventional banking. On this basis, the existence of laws and regulations related to Islamic banking in Indonesia is something that needs to exist. Because Islamic banking is the foundation of the economic milestone for the Muslim community. The existence of these laws and regulations will further strengthen the existence of Islamic banks in Indonesia, to provide services to all people with a sharia system and pattern, which is based on the Al-Qur'an and also the Hadith of the Prophet Muhammad Saw.

Keywords: Islamic Bank; Law; Constitution; Service; Al-Qur'an

Abstrak

Keberadaan bank syariah merupakan tanda bagi kebangkitan ekonomi syariah di Indonesia, apalagi Indonesia merupakan negara yang mayoritas penduduknya beragama Islam. Maka keberadaan perbankan syariah di Indonesia seharusnya menjadi suatu hal yang penting karena berkaitan dengan terwujudnya ekonomi kerakyatan, apalagi Indonesia adalah negara hukum yang mengikat segala kegiatan dan aturan dalam suatu tulisan hukum yang

disahkan dan disepakati. Penelitian ini dilakukan untuk menjawab tentang pentingnya landasan hukum berdirinya hukum perbankan syariah di Indonesia. Metode penelitian ini menggunakan pendekatan yuridis normatif. Penelitian hukum dengan pendekatan ini berorientasi pada norma-norma yang terkandung dalam peraturan perundang-undangan. Hasilnya, posisi formal hukum perbankan syariah di Indonesia dikatakan kuat secara yuridis, bahkan sejalan dengan posisi perbankan konvensional lainnya. Atas dasar tersebut, keberadaan peraturan perundang-undangan terkait perbankan syariah di Indonesia merupakan sesuatu yang perlu ada. Karena perbankan syariah merupakan tumpuan tonggak ekonomi bagi masyarakat muslim. Adanya peraturan perundang-undangan tersebut akan semakin memperkuat eksistensi bank syariah di Indonesia, untuk memberikan pelayanan kepada seluruh masyarakat dengan sistem dan pola syariah, yang berlandaskan pada Al-Qur'an dan juga Hadith Nabi Muhammad Saw.

Kata Kunci: Bank Syariah; Hukum; Undang-Undang; Pelayanan; Al-Qur'an

Introduction

The existence of Islamic banks in Indonesia is currently developing late when compared to the majority of Muslim countries. In fact, in general, Islamic banks are one of the proofs of the development of the Islamic economic system, especially in Indonesia. However, on the other side, the formal position of Islamic banking law is said to be strong from a juridical point of view, even in line with the position of other conventional banking.¹ This research was conducted to answer about the importance of legal foundations of the establishment of Islamic banking law in Indonesia. The goal is for the public to know clearly about Islamic banking laws in force in Indonesia.

In a book written by Diana Yumanita Mascara with the title "*Overview of Islamic Banks*" explains that the development of Islamic banks itself emerged in the mid-20th century and made Islamic banks part of the Islamic economic system. The existence of Islamic banks was first pioneered and established by Mit Ghamr Local Saving Bank in Egypt. However, during its historical course during the heated political situation of its time, the bank was successfully taken over by

¹Septa Diana Nabella et al., "The Effect of Financing on Islamic Banking Assets with Non-Performing Finance As a Moderating Variable in Indonesia," *Jurnal Ekonomi* 12, no. 1 (2023): 1001, <https://ejournal.seaninstitute.or.id/index.php/Ekonomi/article/view/1241/1056>.

the National Bank of Egypt and the Central Bank of Egypt in 1967, and then operated on a usury-based system.²

For history, the usury-free banking system reappeared in 1972, the usury-free banking system was introduced with the arrival of the Nasser Social Bank in Egypt. Another milestone in the development of Islamic Banks was marked by the establishment of the Islamic Development Bank (IDB) in Jeddah in 1975 by countries that participated as members of the Organization of the Islamic Conference (OIC). Then the IDB has a very important role in Muslim countries in funding the development of these Islamic countries. Then, it was the IDB's journey that became an example and a pioneer for other countries to participate in establishing an Islamic financial system.³

This had an impact on the emergence of various types of banks in Egypt in the 1970s and early 1980s. In fact, not only in Egypt but the emergence of these banks also occurred in several other regions, such as Sudan, the Gulf countries, Pakistan, Iran, Bangladesh, Malaysia, to Turkey.⁴ Indonesia's delay in this aspect of Islamic banking is one of the proofs that the economic development of Muslims is lagging. The history of the existence of Islamic banks in Indonesia, began to live in 1980 the polemic over the existence of Islamic banks as a pillar of the Islamic economy began to be separated.

The peak was in 1991 after in-depth deliberations at the Indonesian Ulema Council which began in 1990 to fight for the establishment of an Islamic bank in Indonesia to support the economy of Muslims, the community consensus resulted in the deed of establishment of PT Bank Muamalat Indonesia.⁵ The penetration of the entry of the Islamic bank system in Indonesia has made the factual existence of Indonesian Islamic Banks continue to increase rapidly, starting from an institutional perspective or even an operational basis.

²Ascarya and Diana Yumanita, *Bank Syariah: Gambaran Umum* (Jakarta: Pusat Pendidikan dan Studi Kebanksentralan (PPSK) BI, 2005), 26.

³Nurnasrina, P. Adiyes Putra, and Nurlaili, *Manajemen Pembiayaan Bank Syariah* (Pekanbaru: Cahaya Firdaus, 2019), 38.

⁴Abdullah Saeed, *Menyoal Bank Syariah: Kritis Atas Interpretasi Bunga Bank Kaum Neo-Revivalis* (Jakarta: Paramadina, 2004), 53.

⁵Muhammad Syaff'i. Antonio, *Islamic Banking for Bankers and Financial Practitioners* (Jakarta: Tazkia Institute, 2001), 41.

Developments have been increasingly felt since the enactment of Law Number 7 of 1992 concerning Banking. The law was later amended by Law Number 10 of 1998 concerning the Banking Law. The existence of Islamic banks is even stronger with the existence of Law Number 23 of 1999 concerning Bank Indonesia which has been amended by Law Number 3 of 2004 concerning the BI Law. Where the presence of the BI law allows for the presence of monetary policies based on sharia principles.⁶

In essence, efforts to mature Islamic banking in Indonesia are not merely juridical in the banking law and BI law. However, it is an inseparable part of the efforts to improve the national banking system, the foundation of which is to increase the resilience of the national economy. In this effort, there are several goals in developing banking based on sharia principles. Among them: (1) The existence of Islamic banking can help to reduce the systematic risk of the failure of the financial system in Indonesia; (2) Islamic banking is expected to be able to meet the needs of banking services for Indonesian people who are fanatical about the concept or system of interest in banking; (3) Islamic banking can also create a dual banking system in Indonesia that accommodates both conventional banking and Islamic banking which creates healthy competition and business behavior based on Islamic moral values; (4) The existence of Islamic banking can also encourage the role of banking in Indonesia in driving the real sector and limiting speculation or productivity because financing is shown in businesses that are carried out because they are based on prevailing Islamic moral values.⁷

Looking back at Indonesia's past, at the end of 1997 to be precise, it gives an illustration of banks operating based on sharia principles that were relatively able to survive and had better performance than conventional banks, even though at that time the Indonesian economy was in the midst of high exchange rate flows and high-interest rates in his time. This can be seen in the numerical values of Non Performing Financing (NPFs) whose position is much

⁶Ascarya and Yumanita, *Bank Syariah: Gambaran Umum*, 29.

⁷Aldira Maradita, "Karakteristik Good Corporate Governance Pada Bank Syariah Dan Bank Konvensional," *Yuridika* 29, no. 2 (2014): 194, <https://doi.org/10.20473/ydk.v29i2.366>.

lower than conventional systems, and it is also proven that in that situation there is no negative spread, and the impact it has on carrying out the intermediary function.⁸

This phenomenon is borne by the operational characteristics of Islamic banks which strictly prohibit the practice of *riba* (interest) in their system. In addition, Islamic banks also have a very transparent character in their system, and there is a speculative system. If it is categorized as a Islamic bank, it adheres to three solid systems in practice, namely avoiding the type of *riba*, *gharar* or transparent, and *masyir* which has a speculative meaning.

The existence of the 1998 banking law and the BI law created a new atmosphere for Islamic banking in Indonesia. In fact, from there the number of banks grew very rapidly, from which initially there was only one Islamic commercial bank and seventy-eight Islamic People's Credit Banks (BPRS) in 1998, multiplying into three Islamic commercial banks, with 18 sharia business units and 88 BPRS at the end in 2004 with a network of 443 offices in 20 provinces in Indonesia.⁹

However, at that time the contribution to total national banking was still relatively small, namely IDR 15,3 trillion or the equivalent (1,3%), even though on the other side the assets of Islamic banking have achieved an average growth of more than 80% annually in the period 1998 to 2004. Based on the existence of Islamic banking in Indonesia that the existence of the banking law and the BI law alone is not strong enough to accelerate the development of Islamic banking. Apart from regulating Islamic banks, each of these laws also becomes the main legal basis for national banks in implementing a dual banking system, known as the dual banking system.¹⁰

This means that this system is sustainable for the development of Islamic banking in Indonesia which can help increase the resilience of the national banking system. So, in this case, the existence of Islamic banking requires a solid legal basis in practice, in the form of detailed laws.

⁸Antonio, *Islamic Banking for Bankers and Financial Practitioners*, 44.

⁹Jaime Grinberg and Katia Paz Goldfarb, "Learning to Teach for Social Justice: Context and Progressivism at Bank Street in the 1930's," *Journal of Education and Human Development* 4, no. 2 (2015): 52, <https://doi.org/10.15640/jehd.v4n2a6>.

¹⁰Maradita, "Karakteristik Good Corporate Governance Pada Bank Syariah Dan Bank Konvensional," 197.

However, flexible that can manage the interests of all stakeholders.¹¹

Thus, this research will focus on the main reasons for the existence of the Islamic banking law in Indonesia. This became the main attraction for the discussion which asked the reasons why the Islamic banking law needed to exist. This research will explore the relevance of the banking law and the BI law as well as a series of regulations in their implementation that regulate Islamic banking according to its position in Indonesia as the pioneer of the Islamic economic system in Indonesia.¹²

Methodology

To study the problems in this research, a tools of method is needed to solve problems, and provides clues to the problems to be discussed. The research method used in this writing framework is to use a normative juridical approach. Legal research with this approach is related to primary and secondary laws, which are oriented toward the norms contained in the legislation.¹³ That is, the method is in practice by examining the rules or norms, as well as rules that have continuity with the problems discussed. This approach aims to collect various regulations and legislation, theories, and literature that are very closely related to the problem being discussed.¹⁴

Results and Discussion

According to Hermawan Usman in the journal of Fitria Dewi Navisa, et. al.,¹⁵ explains that law is a set of written or unwritten rules

¹¹Muhammad Urfi Amrillah, "Urgensi Pembentukan Undang-Undang Digital Banking Bagi Perbankan Syariah Di Indonesia," *Lex Renaissance* 5, no. 4 (2020): 931, <https://doi.org/10.20885/JLR.vol5.iss4.art12>.

¹²Saeed, *Menyoal Bank Syariah: Kritis Atas Interpretasi Bunga Bank Kaum Neo-Revivalis*, 56.

¹³Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: PT Raja Grafindo Persada, 2012), 118.

¹⁴Agung Hidayat, "Critical Review Buku 'Penelitian Hukum' Peter Mahmud Marzuki Penelitian Hukum Ad Quem Tentang Norma," *Yustisia Merdeka: Jurnal Ilmiah Hukum* 7, no. 2 (2021): 120, <https://doi.org/10.33319/yume.v7i2.109>.

¹⁵Fitria Dewi Navisa et al., "Penyuluhan Hukum Untuk Mewujudkan Masyarakat Anti Penyalahgunaan Narkotika Dan Psikotropika," *Jurnal Pembelajaran Pemberdayaan Masyarakat (JP2M)* 1, no. 3 (2020): 254, <https://doi.org/10.33474/jp2m.v1i3.8803>.

that function to regulate people's lives, and good law is the law that exists in society. Sustained other understanding by E.M. Meyers which states that law is a series of rules made considering decency in practice and aims to be a guideline for state authorities.¹⁶

Etymologically, the word law itself comes from Arabic, "*alkas*" which is then drawn and translated into Indonesian to become the word "*hukum*". The law itself has a function in people's lives, even though basically the law aims to realize the goals implied in the law itself. However, several experts also concluded the benefits of the existence of law in people's lives.¹⁷

As explained by Sudikno Mertokusmo, he explained that the law functions as a protection for human interests, and so that these human interests achieve their goals.¹⁸ So the law must work and be implemented without doubt and fraud in practice. On the other side, Lambertus Johannes van Apeldoorn also concluded about the benefits of the existence of law, he stated that law functions as a rule that regulates the peaceful association of life.

Continued again by Joseph Raz, himself stated that the function of this law has two parts in it, namely direct and indirect functions. The following is a description of the benefits of direct and indirect functions according to Joseph Raz, among them: (1) The law can prevent an act committed by a person, as well as encourage the act to be carried out; (2) Law can be used as a facility for a personal-based plan; (3) Law can also play a role in the existence of the provision of services and distribution of goods; and (4) The law can function as a form of dispute that occurs outside the regular channels.¹⁹

From the concept of legal objectives above, the existence of law in Indonesia and general in life in society has several objectives which are described by Nikolaas Egbert Algra, among them: (1) Law aims to create a social order that is good, orderly, and can be directed and not arbitrary in carrying out social relations between fellow people

¹⁶Iswardono, *Uang Dan Bank* (Yogyakarta: BPFE, 1990), 5.

¹⁷Nurnasrina, Putra, and Nurlaili, *Manajemen Pembiayaan Bank Syariah*, 41.

¹⁸Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: Maha Karya Pustaka, 2019), 34.

¹⁹Joseph Raz, *The Concept of a Legal System: An Introduction to the Theory of a Legal System* (Oxford: Clarendon Press, 1970), 83.

and society or society and the state; (2) The law also aims to create an orderly order through absolute provisions and create a balance for the life of society and the state; (3) Another function of law is to uphold existing functions or rules and regulations, this is applying emphasis to an aspect of life or important institutions that influence people's lives.²⁰

Apart from the legal function, there are also several duties of the law itself, this was explained by Nikolaas Egbert Algra. As for the description of legal assignments, among them: (1) Law has to divide between rights and obligations for individuals in social life; (2) The law also serves as an initiating role to share authority and regulate in solving problems in social and state life; (3) The important objective of the law is to maintain the stability of legal certainty itself to create a harmonious atmosphere by the objectives of the law to achieve this justice.²¹

In Indonesia itself, as a rule of law, there are several areas of law made by Indonesia. And all of that is a step to create justice, peace, and life by the values of Pancasila as the direction of the Indonesian nation in the state. The various types of law in Indonesia are classified as follows.²²

First, Indonesian criminal law. Criminal law is a framework part of the public law unit. In practice, criminal law in Indonesia is divided into two types of legal fields. Namely the law that discusses material and formal criminal law. Each of these criminal laws has a function and use in practice. For example, material criminal law, which is a field of law that discusses determining criminal acts, criminal sanctions, and perpetrators of criminal acts, and material criminal law arrangements in Indonesia is regulated in the criminal law code or criminal code. Besides that, Indonesia's formal criminal law is an area of Indonesian criminal law that regulates the application of material law. In Indonesia itself, this law has been legalized and

²⁰Ibid.

²¹Ibid.

²²Friska Cintia Devi, Siti Istikhoroh, and Widiar Onny Kurniawan, "Pengaruh Dana Pihak Ketiga Dan Kredit Bermasalah Terhadap Profitabilitas Bank BUMN Yang Terdaftar Di BEI," *Journal of Sustainability Bussiness Research* 3, no. 2 (2022): 185, <https://doi.org/10.36456/jsbr.v3i2.5598>.

recorded through Law Number 8 of 1981 concerning The Criminal Procedure Code.²³

Second, constitutional law. In this legal section, it is explained that constitutional law is a law that discusses and regulates the state. Among them, are the basis for the establishment of the state, the establishment of institutions, institutional structures, state territory, citizens, and legal relations of rights and obligations between state institutions. Constitutional law is a law that regulates law in a state of silence or immobility, so this law is not a law that addresses the real situation of a country, but rather discusses the state in a general sense.²⁴

Third, administrative law. Administrative law, or what is better known as state administration, is a law or provision that is built to discuss administrative activities within the country. In practice, this law will regulate the implementation of government in carrying out its duties as a state apparatus.²⁵

Fourth, Indonesian civil procedural law. Within the realm of Indonesian civil procedural law, it is a field of law that discusses, and regulates, procedural provisions, this law has continuity within the scope of civil law in Indonesia. The practice of Indonesian civil procedural law is a legal seed that was born ancient from the Dutch period which was introduced by Het Herzien Inlandsch Reglement (HIR).

Fifth, Indonesian criminal procedural law. Within the realm of Indonesian criminal procedural law, it is a field of law that discusses, and regulates, procedural provisions, this law has continuity within the scope of criminal law in Indonesia. Indonesian criminal procedural law is regulated through the criminal procedural law book (Law Number 8 of 1981). Meanwhile, the principles contained in this Indonesian criminal procedural law, among them: (1) The

²³Grinberg and Goldfarb, "Learning to Teach for Social Justice: Context and Progressivism at Bank Street in the 1930's," 55.

²⁴Etty Mulyati and Fajrina Aprilianti Dwiputri, "Prinsip Kehati-Hatian Dalam Menganalisis Jaminan Kebendaan Sebagai Pengaman Perjanjian Kredit Perbankan," *Acta Diurnal: Jurnal Ilmu Hukum Kenotariatan* 1, no. 2 (2018): 137, <https://jurnal.fh.unpad.ac.id/index.php/acta/article/view/164>.

²⁵Devi, Istikhoroh, and Kurniawan, "Pengaruh Dana Pihak Ketiga Dan Kredit Bermasalah Terhadap Profitabilitas Bank BUMN Yang Terdaftar Di BEI," 188.

principle of writing, is a written legal action on the authority of officials supported by law; (2) The principle of justice is fast, simple, honest, low cost, and impartial to anyone. This is a series of criminal justice processes that are carried out quickly, concisely, fairly, and honestly. Starting from the investigation to arriving at the judge's decision; (3) The principle of obtaining legal assistance, the purpose of this hope is to encourage everyone to have the opportunity, even to have legal aid that functions to defend himself against involvement related to punishment; (4) The principle of openness, this principle has a basis related to openness in the examination of criminal acts which are carried out transparently to the public; (5) The principle of proof, in this aspect, is a basis which stipulates that a suspect or defendant is not burdened to be able to provide evidence. However, it is different if this is regulated differently by law, this principle has a foundation related to openness in the examination of criminal acts which are carried out transparently to the public.²⁶

Sixth, law between legal systems. In short, this law is a law that determines, and regulates the relationship between two groups that must be subject to different legal provisions.

Seventh, customary law in Indonesia. Customary law is a policy or norm related to culture and customs and applies to an area in Indonesia.

Eighth, Islamic law in Indonesia. Islamic law in Indonesia itself cannot be established as a whole, considering that Indonesia is a Muslim-majority country, not entirely Muslim. So the enforcement of Islamic law in Indonesia if it is comprehensive will be very risky to the norms and culture of society. However, Islamic law in Indonesia has been applied to parts of Indonesia's territory, yes that is the region of Aceh which uses Islamic law, which refers to Article 15 Paragraph 2 of Law Number 4 of 2004 concerning Judicial Power in Islamic Sharia Courts in Aceh Province.

Of the many types of law in Indonesia, the application of law in Indonesia itself is in the rules and regulations regarding Islamic banking, regulated in the banking regulations and laws. The

²⁶Grinberg and Goldfarb, "Learning to Teach for Social Justice: Context and Progressivism at Bank Street in the 1930's," 58.

business activities of this bank originally came from the provisions of the bank's founders or entry regulations. In addition, operational provisions are broken down into three main sections of banking, including: (1) Fundraising; (2) Distribution of funds; and (3) Provision of service-based banking services.²⁷

The three businesses above operate based on the banking law and BI law (Bank Indonesia law). So, as long as there is a relationship between the bank and the customer, the engagement is carried out based on the law of the agreement stipulated in the civil code, then also continues to positive civil law, as well as the criminal code (book of commercial law).

In addition to all that, and finally, it is one of the regulatory aspects regarding the revocation of business licenses or bank liquidation, while still taking into account the position of the bank as a legal entity unit and accountability in the field of business for parties who have an interest. On the other side, the development of Islamic banks itself has led to a new rule or method in carrying out bank business activities, which is based on two *qibla*, between the Al-Qur'an and also the Hadith of Prophet Muhammad Saw. Islamic bank rules that are oriented towards these two aspects have strict rules regarding consistency in regulating aspects, business activities, establishment, up to the stage of revocation of business license or liquidation.²⁸

Islamic banks are financial institutions that have an important existence in Indonesia. All current business activities always involve banks, be they small, large, or even medium businesses. An entrepreneur in conducting his business always needs funds in developing his business, from the banking sector and even for remittance activities and also guarantees for transactions. In addition, many professional jobs also use banking services, especially in transferring money, developing offices, etc. Farmers who cultivate large areas of land also need funds to cultivate rice fields or gardens.

An understanding of Islamic banking itself can be found based

²⁷Antonio, *Islamic Banking for Bankers and Financial Practitioners*, 47.

²⁸Muhammad Faisal Yahya et al., "Kredit Bank Syariah Dan Konvensional Banks Pada Masa Ketidakpastian," *Prosiding National Seminar on Accounting, Finance, and Economics (NSAFE)* 1, no. 6 (2021): 182, <http://conference.um.ac.id/index.php/nsafe/article/view/1295>.

on three aspects that define Islamic banking, among them: (1) Viewed based on rules and regulations. Judging from Law Number 21 of 2008 concerning Islamic Banking and Law Number 10 of 1998 jo. UU No.7 of 1992, all three have the same interpretation regarding banks, namely business entities that collect funds from the public in the form of savings and distribute them to the community to improve the standard of living of the people at large. Meanwhile, Islamic banks are banks that carry out their business activities based on sharia principles and by type consist of Islamic commercial banks and BPRS; (2) Viewed based on bank activities or bank services to the services offered to consumers. The meaning of a bank can be clarified based on the products offered to consumers, that a bank is an institution that accepts deposits and distributes them to the public, and provides other services; (3) Viewed based on its economic function in providing services to the community the notion of a bank with an economic function approach, that a bank is an institution that accepts deposits and distributes them to business economic activities and also performs other service activities.²⁹

Based on these three approaches, the definition of a bank is a financial service institution that carries out efforts to collect funds from the public and distribute them to the community in the form of financing or loans and other economic activities in the form of services. Islamic banks which are one of the banks in Indonesia can be interpreted as business entities in the financial sector whose activities are collecting funds from the community and channeling them to the community in the form of financing or loans and carrying out other economic activities in the form of services provided based on sharia principles.³⁰

Based on this understanding, Islamic banks are banks that have special characteristics in their operations by implementing sharia, namely profits and losses sharing both in raising funds and financing and in product services, there is a difference between banks based on sharia principles, compared to conventional banks, namely

²⁹Geoffrey G. Meredith, Robert E. Nelson, and Philip A. Nick, *Kewirausahaan: Teori Dan Praktek* (Jakarta: Pustaka Binaman Pressindo, 1984), 67.

³⁰Sylvia Janisriwati, Paula Swandayani Hartanto, and Theresia Fedora Lolo, "Perubahan Jenis Bank Terhadap Kedudukan Jaminan Kredit," *Jurnal Education and Development* 9, no. 2 (2021): 208, <https://doi.org/10.37081/ed.v9i2.2534>.

Islamic banks.

Sharia law in business activities has been practiced with several principles. Among them, are the principle of profit sharing, the principle of buying and selling, the principle of leasing or renting and buying, as well as other sharia principles, such as the management of Islamic banks between owners and administrators or between institutional support that has links with justice, arbitration, and institutions that oversee sharia.³¹

To establish an Islamic bank, it is necessary to apply to establish an Islamic bank. This license will go through two stages of licensing, namely principal licenses and business licenses, and where these licenses will be issued or ratified by the banking authority Bank Indonesia or BI. In submitting this application, the aspects that are important and need to be observed in this process are aspects of bank ownership and bank management.

Related to this opinion, there is a provision that applies in Article 22 of the Banking Law which provides a statement that commercial banks should be established by all Indonesian people or Indonesian legal entities working with foreign nationals, or foreign legal entities in a partnership system. In addition to that article, Article 23 also states that rural banks can also be established and only owned by Indonesian citizens, regional governments, and Indonesian legal entities, or can be jointly owned by all three.³²

Within the principles of Islamic banks themselves, Islamic banks should be established based on the interrelationship of Islamic principles as a system of life, which describes where humans are caliphs or leaders in this world, based on the information of the Al-Qur'an and Hadith of the Prophet Muhammad Saw. The description of the caliphate discussed in the Al-Qur'an is quoted through a fragment of surah Al-Maidah verse 48 which reads, "... *for each of you, we have wanted clear rules and paths for you ...*".³³

Comprehensive sharia essentially covers all aspects of human

³¹Selim Ahmed et al., "The Impact of Islamic Shariah Compliance on Customer Satisfaction in Islamic Banking Services: Mediating Role of Service Quality," *Journal of Islamic Marketing* 13, no. 9 (2022): 1832, <https://doi.org/10.1108/JIMA-11-2020-0346>.

³²Ibid.

³³Ibid.

life, starting from worship to *muamalah*, while the universal side can be implemented at any time and place until the day of resurrection. Based on this comprehensive and universal perspective, sharia should not adhere to the principle of limiting ownership so that BPRS can also be opened by foreign legal entities, while this still makes a major contribution to the prosperity of the people.

In practice, BPRS has a very big role in financing small businesses, even though the funds provided are constrained due to the small amount they get. So, as a solution to this, only opportunities were opened for foreign bodies to be able to join BPRS with partner status, with national ownership. This could be a problem-solving tools related to capital constraints on small businesses that have minimal value so that they increase. And this will later have an impact and return to the welfare of the people. Not only that, another advantage that can be obtained from this collaboration is that, with the arrival of a foreign legal entity as a partner, it will bring technology and management products that are relatively more advanced and have an impact on improving the quality of BPRS management.

According to the Big Indonesian Dictionary, business is an activity that expends energy, mind, or body to achieve a purpose and goal. So what is meant by business implementation in banking in general, bank institutions or financial intermediation, or even Islamic banking business activities essentially include four aspects in their main activities, among them: (1) Fundraising activities originating from the public; (2) Bank fund distribution activities to the public; (3) Offering services and products from financial services; (4) Business management activities or internal management. From each of these points, the following is a description of each activity point in fulfilling the rules and business for Islamic Banks.³⁴

First, collection of funds from the community. The basis for raising funds from the public has a legally binding basis that is contained in Article 6 point (a) of the Banking Law which is regulated by, collecting funds from the community in deposits in the form of

³⁴Hisam Ahyani et al., "Standardization of Companies and the Islamic Business Environment in Indonesia," *Jurnal Ilmiah Ekonomi Islam* 8, no. 1 (2022): 13, <https://doi.org/10.29040/jiei.v8i1.3795>.

demand deposits, certificates of deposit, time deposits, savings, or even other forms that have in common with the things mentioned. In the provisions beside, Article 6 point (c) provides a statement, if the collection of funds is in the form of other than current accounts, deposits, or savings, then it can be embraced through the issuance of a debt statement.

Fundraising in the description of Article 6 of the Banking Law is essentially applied to conventional commercial banks or Islamic commercial banks. The term savings in Article 6 point (a) which quoting demand deposits and savings accounts, basically the substance arrangement is that the funds are deposited, and the bank must return the deposited funds to customers including interest obligations. When viewed from the side of sharia principles, the application of savings is the same as demand deposits and savings. As for deposits and savings, they are more familiar with the investment system. This is based on the provisions that deposits are an investment cooperation relationship, not a savings account.

So it is also the case with the provision that banks can also issue debt acknowledgments, as pada the description of Article 6 point (c), in the context of conventional banks. This is an activity that is reasonable to carry out, even though in sharia activities, the collection of funds is carried out by issuing debt acknowledgments. Because basically, the acknowledgment of debt is not part of the investment. So in this case, the regulation of Islamic banks needs to be reaffirmed, by providing clarity regarding the provision of compensation to the owner of the funds.

Second, distribution of community funds. In channeling funds to the public, it is regulated through the banking law which regulates the business of commercial banks in providing credit, this is related to Article 6 point (b), then proceed to Article 6 point (d) concerning buying securities and Bank Indonesia certificate or SBI. The following is also discussed in Article 6 point (f) which explains placing funds with other banks, as well as placing funds originating from customers with other customers, in the form of securities that have no records or traces of which are not listed on the stock exchange, this is the contents content of Article 6 point (j). And the last content in Article 6 point

(m) discusses the provision of financing or other activities that have a basis and sharia principles by Bank Indonesia (BI) regulations.³⁵

Other fund distribution activities by carrying out foreign exchange activities that comply with the provisions by Bank Indonesia are regulated in Article 7 point (a), discussed next in Article 7 point (b) concerning carrying out capital participation activities in banks or other companies in the financial sector such as leasing, securities companies, venture capital, clearing institutions, and insurance that meet the terms and conditions imposed by Bank Indonesia BI.

Article 7 point (c) explains that participants will be carried out in the context of providing temporary capital to anticipate the failure of the credit system or failure of financing, then based on sharia principles, the participation must be withdrawn by fulfilling the provisions of Bank Indonesia (BI). If it is related to sharia principles, the distribution of credit in Article 6 point (b) in the understanding of channeling funds by setting aside and taking interest in return is something that is not allowed in the sharia system.

This also has similarities with the purchase of securities and SBI, as well as the placement of funds with other parties listed in Article 6 points (d) and (f) need to be infused with comprehensive regulations regarding the purchase of securities and SBI and placement of funds with other banks must comply with sharia principles.

Then there are other forms of distribution of funds which are the main activities of Islamic banks in the description of buying and selling or *murabahah*, then there are also receivables with payment in advance or *salam*, and there are also receivables with gradual payments as well as making mortgage or *rahn* loans which have not been clearly defined in Indonesian legislation.

Third, bank products and services. In the banking law which regulates banking services for commercial banks is a transfer of money either for personal gain or for the benefit of customers, Article 6 point (e) by accepting payment of securities and making calculations or between third parties in Article 6 point (h) concerning carrying out safekeeping

³⁵Lucky Nugroho, Erik Nugraha, and Ahmad Badawi, "Intermediary Strategy Impact to Return on Asset in Covid-19 Pandemics: Islamic Bank vs Conventional Bank (Indonesia Empirical Cases)," *Business Economics and Management Research Journal* 5, no. 3 (2022): 160, <https://dergipark.org.tr/en/pub/bemarej/issue/73285/1152131>.

activities in the interests of other parties based on a stipulation contract. Article 6 point (i) engages in receivable derivative activities, trustee activities, and credit card business activities. Furthermore, in the description of Article 6 point (1) by carrying out all other activities. However, it is still common practice by banks and does not conflict with legally stipulated laws and regulations (Article 6 point (n)).³⁶

In essence, service market activities are carried out by the bank, this is stipulated in Article 6 point (e, g, h, i, l, and n) which is a description of the series of activities that are commonly carried out by Islamic banks. Article 6 point (l) itself stipulates that banks can carry out credit card activities to customers in general, making sure that the general credit cards used by customers contain provisions or interest benefits for the bank. So, it can be concluded that these activities have been expressly determined that these activities are carried out without having things that are prohibited by sharia principles.

In addition, in the statement of Article 14 point (b) that the regulation of BPRS stipulates that BPRS are prohibited from conducting business activities in foreign exchange relations, or implementing capital withdrawals. As is known, the existence of this policy will be very contrary to the business characteristics of Islamic banks based on their products as a system of cooperation or partner relations.

Fourth, bank management. In carrying out management, in essence, the bank will focus on implementing the maximum limit of bank fund facilities for related and unrelated parties. This is regulated in the banking law stipulated by Bank Indonesia (BI) in stipulating the maximum limit provisions in providing credit or financing based on sharia principles, placing investments in securities, providing a guarantee, or other things that have a similarity, which carried out by the bank to individual borrowers or a group of related borrowers.³⁷

The information in Article 11 paragraph (1) stipulates that the maximum limit may not exceed 30% of the bank's capital. Article 11 paragraph (2) continues that the maximum fund is 10% of the bank's capital for shareholders who own 10% or more of the capital

³⁶Muhammad Tun Samudra, "Politics of Sharia Banking Law in Indonesia," *Legal Brief* 11, no. 2 (2022): 1510, <https://doi.org/10.35335/legal.v11i2.326>.

³⁷*Ibid.*

deposited into the bank, members of the board of commissioners, members of the board of directors, commissioners or directors, as well as bank officials and companies in which there is interest from these related parties (Article 11 paragraph (3 and 4)).

So the existence of the provisions of Article 11 paragraphs 3 and 4 can be a threat because of the limitations imposed in providing financing to parties related to the bank. This seems to provide an opportunity for discriminatory practices or self-dealing of bank funding facilities by bank management. If this is related to sharia principles which are based on fairness and honesty as well as strict prohibitions against abusive practices towards other parties, then the opening of these restrictions will hinder the objectives of Islamic banks as banks that provide facilities to people with high credibility, trustworthiness, and transparency as all the practice of these methods and methods is a reflection of the study of knowledge described in the Al-Qur'an and also the Hadith of the Prophet Muhammad Saw.³⁸

Conclusion

As we know, Indonesia is a country that is nicknamed the majority of the Muslim community, this is based on factual evidence that the majority of the Indonesian population is Muslim. From the description above, it can be concluded that the existence of Islamic banks as an Islamic economic system is true. As it is known that Islamic banking in practice is always inseparable from the provisions of the Al-Qur'an and also the Hadith of the Prophet Muhammad Saw. On that basis, there are many rules in the practice of Islamic banking that are far from what is forbidden by Allah Swt. The Islamic banking system can grow, which has been proven from its heyday in the Turkish era, which succeeded in financing every Muslim country through the establishment of Islamic banks. As long as the practice of Islamic banking is needed to strengthen, and guard so that the existence of Islamic banks can run well, this is one of the functions of the law according to to Nikolaas Egbert Algra. It can be seen from the implementation related to Article 29 of the 1945 Constitution which

³⁸Ahmed et al., "The Impact of Islamic Shariah Compliance on Customer Satisfaction in Islamic Banking Services: Mediating Role of Service Quality," 1835.

discusses the nation's economy, which underlies or guides the state to participate in protecting applicable legal policies as the function of law is as protect and order in people's lives. So, on this basis, the existence of laws and regulations related to Islamic banking in Indonesia is something that needs to exist. Because Islamic banking is the foundation of the economic milestone for the Muslim community. The existence of these laws and regulations will further strengthen the existence of Islamic banks in Indonesia, to provide services to all people with a sharia system and pattern, which is based on the Al-Qur'an and also the Hadith of the Prophet Muhammad Saw.

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The Concept of Sharia Compliance on Islamic Bank Murabaha Financing in the Maqashid Sharia Approach: A Theoretical Study

Nurul Faizin

(Corresponding Author)

University of Darussalam Gontor, Indonesia

Email: nurulfaizin@unida.gontor.ac.id

Royyan Ramdhani Djayusman

Kingston University, United Kingdom

Email: r.djayusman@kingston.ac.uk

Abstract

Murabaha financing is the financing with the highest value in Indonesia which can be seen from the Islamic Banking Snapshot issued by OJK, which shows that the murabaha financing using covers 46,22% of all distributed financing until September 2021. This research aims to give the theoretical background for sharia compliance murabaha bank financing, which gives an understanding of how Islamic banks can be sharia compliance in financing using the murabaha contract. This research is descriptive qualitative research in the form of literature research using theoretical or conceptual study methodology. The result shows the sharia compliance of murabaha financing is based on four approaches, namely the 'aqd approach, maqashid sharia approach, the documentation approach, and the accounting and financial reporting approach. The 'aqd approach states that the murabaha transaction should be bonafide among independent parties (supplier, buyer, and financier) and not involve a guaranteed profit. As for the maqasid sharia approach, besides ensuring maqasid sharia in wealth (its circulation, its clarity, its preservation, its stability, and justice in it), the murabaha should ensure public interest as well as to contribute to the removal of hardship. In the documentation approach, the form and the materials of the contract documented for murabaha should comply with the principle and requirements of the contract according to Islamic law and has to be overseen by the Sharia Supervisory Board in drafting. And for the accounting and financial reporting approach, the information disclosure should contain

the value of assets when executing the murabaha, clarifications that murabaha receivables are measured on the cost, the profits of murabaha were completed when contracting, the deferred profit is not deducted from the murabaha receivable, there is no clear treatment for early repayment if it occurs, and there is no clear handling of cases of customer insolvency or delay in payment if any.

Keywords: Sharia Compliance; Murabaha; Islamic Banking; Maqashid Sharia

Abstrak

Pembiayaan murabahah merupakan pembiayaan dengan nilai tertinggi di Indonesia yang dapat dilihat dari Snapshot Perbankan Syariah yang diterbitkan oleh OJK, yang menunjukkan bahwa pembiayaan murabahah mencakup 46,22% dari seluruh pembiayaan yang didistribusikan hingga September 2021. Penelitian ini bertujuan untuk memberikan landasan teoritis kepatuhan kepada syariah untuk pembiayaan murabahah di perbankan syariah, yang memberikan pemahaman tentang bagaimana bank syariah dapat mematuhi syariah dalam menyalurkan pembiayaan menggunakan akad murabahah. Penelitian ini merupakan penelitian kualitatif deskriptif dalam bentuk penelitian kepustakaan menggunakan metodologi kajian teoritis atau konseptual. Hasil penelitian menunjukkan kepatuhan syariah pembiayaan murabahah didasarkan pada empat pendekatan, yaitu pendekatan akad, pendekatan maqashid syariah, pendekatan dokumentasi, dan pendekatan akuntansi dan laporan keuangan. Pendekatan akad menyatakan bahwa transaksi murabahah harus bonafide di antara pihak independen (pemasok, pembeli, dan pemberi pembiayaan) dan tidak melibatkan keuntungan terjamin. Adapun pendekatan maqashid syariah, selain memastikan maqashid syariah dalam harta (peredarannya, kejelasannya, pelestariannya, stabilitasnya, dan keadilan di dalamnya), murabahah harus memastikan kepentingan umum serta berkontribusi pada penghapusan kesulitan. Dalam pendekatan dokumentasi, bentuk dan isi kontrak yang didokumentasikan untuk murabahah harus sesuai dengan prinsip dan persyaratan kontrak menurut hukum Islam dan harus diawasi oleh Dewan Pengawas Syariah dalam penyusunannya. Dan untuk pendekatan akuntansi dan pelaporan keuangan, keterbukaan informasi harus berisi nilai aset saat melaksanakan murabahah, klarifikasi bahwa piutang murabahah diukur menurut biaya, keuntungan murabahah ditetapkan saat kontrak, laba tangguhan tidak dikurangkan dari piutang murabahah, tidak ada perlakuan yang jelas untuk pelunasan awal jika terjadi, dan tidak ada penanganan yang jelas atas kasus kepailitan pelanggan atau keterlambatan pembayaran jika ada.

Kata Kunci: Kepatuhan Syariah; Murabahah; Bank Syariah; Maqashid Syariah

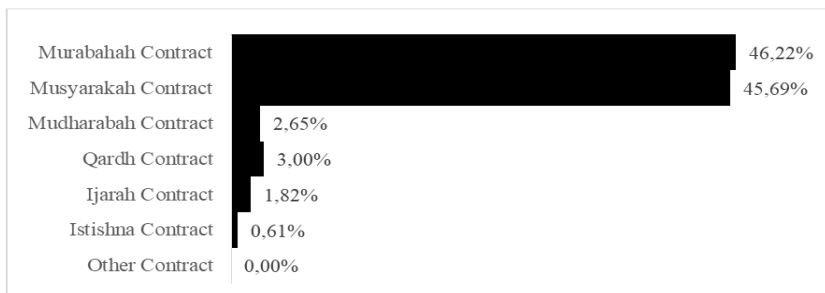
Introduction

Indonesia as a country with a majority Muslim population, makes it a very potential market for Islamic banking products, offered by Islamic commercial banks, Islamic financing banks, and Islamic business units. This relates to the obligation of a Muslim to meet his needs, both consumption and production, by using products that are following sharia principles, which the main thing in terms of banking products is to use products that are free of interest or usury.¹

However, the standard of sharia compliance is not enough just to be usury-free, because sharia compliance can only be achieved if these products are carried out and implemented following the guidance of sharia as prescribed in the Al-Qur'an and Sunnah. So that these products are following the *maqashid sharia*, and provide benefits that are permitted by sharia.²

The murabaha financing is the financing with the highest value in Indonesia, according to the Islamic Banking Snapshot issued by OJK, which showed the distributed financing data with a total of IDR 413,31 trillion, as follows:

Figure 1: Percentage of Distributed Financing Until September 2021



Source: OJK (Financial Services Authority), Indonesia

¹Iksan and Wardah Yuspin, "Comparative Analysis of Malaysian Islamic Bank Agreements with Indonesia," *Journal of Transcendental Law* 4, no. 1 (2022): 42, <https://doi.org/10.23917/jtl.v4i1.18798>.

²Kazi Md. Tarique et al., "Constructing a Maqasid (Objective) Based Performance Measurement Index for Islamic Banks," *International Journal of the Analytic Hierarchy Process* 12, no. 2 (2020): 331, <https://doi.org/10.13033/ijahp.v12i2.770>.

This is partly due to the ease of implementation for banks to get usury-free profits because the basis of its contract is buying and selling, not capital loans. Although the form is buying in installments or non-cash buying, murabaha financing inevitably generates debt for customers to bank.³ In this case, the debt paid by the customer as a buyer is the debt of the price of buying goods from the bank as the seller. As for easiness of implementation of murabaha financing, it is because murabaha is a short-term and easy investment mechanism, that can ensure Islamic bank's profits similar to those of conventional banks, remove *gharar*, and not allow the bank to interfere in the management of the customer's business, because of it's creditors-debtors relationship.⁴

Miah and Suzuki stated that many Islamic banks are affected by what they named murabaha syndrome, as they relied much on murabaha financing that was debt-like financing, which they considered not truly a sharia-based product but it is sharia compliance and Islamic.⁵ Suzuki and Miah argued that the Islamic banks used two kinds of benchmarks in endorsing less sharia compliance Islamic products, namely the sharia compliance benchmark and the *raf' al-haraj* benchmark, in which the logic of procedural and instrumental rationality of this Islamic finance must be assimilated to the *maqashid sharia*, to conform, in intention and action, to the truth prescribed in Al-Qur'an.⁶

The non-sharia compliance problem in murabaha, according to Mapeyo, et.al., occurred from customers and suppliers to avoid the commodity and collect cash money in murabaha financing, as well as occurred from the banking institutions themselves by adding wakala contract to the murabaha that affects transfer of ownership from the

³Shalih bin 'Uthman bin 'Abd Al-'Aziz Al-Halil, *Tawthiq Al-Dayn Fi Al-Fiqh Al-Islami* (Riyadh: Jami'at Al-Imam Muhammad bin Sa'ud Al-Islamiyyah, 2001), 28.

⁴Anita Rahmawaty, "Ekonomi Syari'ah: Tinjauan Kritis Produk Murabahah Dalam Perbankan Syari'ah Di Indonesia," *La Riba* 1, no. 2 (2007): 190, <https://doi.org/10.20885/lariba.vol1.iss2.art3>.

⁵Mohammad Dulal Miah and Yasushi Suzuki, "Murabaha Syndrome of Islamic Banks: A Paradox or Product of the System?," *Journal of Islamic Accounting and Business Research* 11, no. 7 (2020): 1366, <https://doi.org/10.1108/JIABR-05-2018-0067>.

⁶Yasushi Suzuki and Mohammad Dulal Miah, "Shari'ah-Compliant Benchmark and Shari'ah-Based Raf' Al-Haraj Benchmark on Prohibition of Riba," *International Journal of Islamic and Middle Eastern Finance and Management* 14, no. 1 (2021): 154, <https://doi.org/10.1108/IMEFM-11-2019-0490>.

supplier to the banking institution to conclude a murabaha transaction.⁷

Mustafa affirmed the reason why Islamic banks concentrated on financing in murabaha mode was that they were heavily relying on collaterals, in case of customer's default, they liquidated or sold assets related to murabaha contract thus reduced the impact of credit risk on the financial performance, as the results found a significant positive relationship between the non-performing financing and provision finance by murabaha mode.⁸ Because according to Andriyani, the non-performing financing in murabaha will decrease the banks performance and thus decrease the value of the *maqashid sharia*.⁹

Taufik, Muhammad, and Nugraheni stated that although murabaha complies with sharia and drives profitability, to improve the performance of its *maqashid sharia*, Islamic banks need to evaluate its financing contracts,¹⁰ as it was stated by Al-Nahari, et. al. that any Islamic finance product must have parameters to verify the *maqashid sharia*, control them and connect them with related indicants,¹¹ as Qoyum previously stated that the *maqashid sharia* framework is intended to solve the problem of pseudo-Islamic finance products which are just mimicking their conventional counterparts.¹²

From the view of product development according to the *maqashid*

⁷Ramadhani Salim Mapeyo et al., "Shari'ah Compliance Issues in the Practices of Murabahah Financing Products Offered by Banking Institution in Tanzania," *International Research Journal of Shariah, Muamalat, and Islam* 4, no. 10 (2022): 33, <https://doi.org/10.35631/IRJSMI.410003>.

⁸Omer Allagabo Omer Mustafa, "Why Do Islamic Banks Concentrating Finance in Murabaha Mode? Performance and Risk Analysis (Sudan: 1997-2018)," *International Business Research* 13, no. 7 (2020): 211, <https://doi.org/10.5539/ibr.v13n7p208>.

⁹Melisa Andriyani, "Pengaruh Murabahah, CAR, Dan DPK Terhadap Maqasid Syariah Dengan NPF Sebagai Moderating," *Jurnal Ekobis: Ekonomi Bisnis & Manajemen* 11, no. 2 (2021): 227, <https://doi.org/10.37932/j.e.v11i2.382>.

¹⁰Muhammad Taufik, Rifqi Muhammad, and Peni Nugraheni, "Determinants and Consequences of Maqashid Sharia Performance: Evidence from Islamic Banks in Indonesia and Malaysia," *Journal of Islamic Accounting and Business Research* 21, no. 2 (2023): 36, <https://doi.org/10.1108/JIABR-07-2021-0205>.

¹¹Ameen Ahmed Abdullah Qasem Al-Nahari et al., "Common Conceptual Flaws in Realizing Maqasid Al-Shari'ah Vis-a-Vis Islamic Finance," *ISRA International Journal of Islamic Finance* 14, no. 2 (2022): 193, <https://doi.org/10.1108/IJIF-12-2020-0259>.

¹²Abdul Qoyum, "Maqasid Ash-Shari'ah Framework and the Development of Islamic Finance Products: The Case of Indonesia," *Tazkia Islamic Finance and Business Review* 12, no. 2 (2018): 172, <https://doi.org/10.30993/tifbr.v12i2.150>.

sharia, Diallo and Gundogdu argued that the widespread implementation of murabaha-based new products for financing services, should be the subject of a wider question of *maqashid sharia*, e.g. is it to enable financial institutions, whether Islamic or non-Islamic, to prey in the name of sharia compliance or financial intermediation?¹³ Thus, according to Ghozali, et. al., the murabaha contract has drawn a great deal of criticism due to the lack of compliance with sharia principles in its application, and its similarity to conventional bank loans.¹⁴

This research aims to give the theoretical background for sharia compliance for murabaha financing in Islamic banking, which gives an understanding of how Islamic banks can be sharia compliance in financing using the murabaha contract, or in other words, how Islamic banks use murabaha contract that fulfills the contract's conditions that meet sharia principles and objectives. For there are many critics towards the use of sharia-based product,¹⁵ that did not satisfy the *maqashid sharia* nor the purpose of the product.¹⁶

Methodology

This research is descriptive qualitative research in the form of literature research using theoretical or conceptual study methodology. Descriptive studies are communicated through the data, whereas theoretical studies are communicated through concepts illustrated by data, with the purpose to give an understanding or explanation of features of social life beyond the settings studied,¹⁷ namely sharia

¹³Amadou Thierno Diallo and Ahmet Suayb Gundogdu, eds., "Islamic Financial Product Development in the Context of Education and Health," in *Sustainable Development and Infrastructure: An Islamic Finance Perspective* (Cham: Springer International Publishing, 2021), 132.

¹⁴Mohammad Ghozali et al., "The Implementation of Sharia Compliance in the Murabaha Contract," in *Proceedings of the 2nd Social and Humaniora Research Symposium (SoRes 2019)* (Paris: Atlantis Press, 2020), 482, <https://doi.org/10.2991/assehr.k.200225.103>.

¹⁵Qoyum, "Maqasid Ash-Shari'ah Framework and the Development of Islamic Finance Products: The Case of Indonesia," 175.

¹⁶Al-Nahari et al., "Common Conceptual Flaws in Realizing Maqasid Al-Shari'ah Vis-a-Vis Islamic Finance," 196.

¹⁷Steven J. Taylor, Robert Bogdan, and Marjorie L. DeVault, *Introduction to Qualitative Research Methods*, 4th ed. (Hoboken: John Wiley & Sons, Inc., 2016), 162.

compliance murabaha bank financing. As for literature research, it is done by collecting relevant information for the study and developing an extremely systematic literature review,¹⁸ to build a theory of sharia compliance murabaha bank financing.

This research uses descriptive and document analysis methods, based on textual data analysis. Description in qualitative research forms the foundation of data analysis and provides rich contextual detail in it. The description in this research is used throughout data analysis and used concurrently with other analytic tasks in the study.¹⁹ Document analysis is a systematic procedure for reviewing and evaluating documents that entail finding, selecting, appraising, and synthesizing data contained within them. The approaches to document analysis methodology used in this research are content analytic and context analytic of documents as both actors and commentaries.²⁰

Results and Discussion

Sharia Compliance Standards in Financial Transactions

The first research which it proposed the theory of sharia compliance in the transactions of financial institutions is the research carried out by Shahul Hamid bin Mohamed Ibrahim, et. al. who researched and proposed criteria for determining the Islamicity of Islamic banks, which they called the Islamicity Disclosure Indexes, which include three indicators, sharia compliance, corporate

¹⁸John D. Hillebrand and Bruce L. Berg, *Qualitative Research Methods for the Social Sciences*, 4th ed. (Needham Heights: Allyn & Bacon, 2001), 16.

¹⁹Monique Hennink, Inge Hutter, and Ajay Bailey, *Qualitative Research Methods*, 2nd ed. (London: SAGE Publications, Ltd., 2020), 542.

²⁰Benjamin Kutsyuruba, "Document Analysis," in *Varieties of Qualitative Research Methods* (Cham: Springer Nature Switzerland AG, 2023), 142.

governance, and social responsibility.^{21 22 23} The sharia compliance area of financial and financing products covers the structure of the products, their terms or conditions of legal documents, their implementation of products in the market, and the related IT system with multimedia and commercial broadcasting.²⁴

As for determining shariah compliance, including the *maqashid sharia* in Islamic financial transactions and products, this is done with two basic things, the first is sharia governance,^{25 26} and the second is sharia auditing.^{27 28} They are translated into the standards for achieving sharia compliance as drawn by Saiful Azhar Rosly, which

²¹Fahmi Ali Hudaefi and Kamaruzaman Noordin, "Harmonizing and Constructing an Integrated Maqasid Al-Shari'ah Index for Measuring the Performance of Islamic Banks," *ISRA International Journal of Islamic Finance* 11, no. 2 (2019): 285, <https://doi.org/10.1108/IJIF-01-2018-0003>.

²²Essia Ries Ahmed, Md. Aminul Islam, and Tariq Tawfeeq Yousif Alabdullah, "The Moderating Role of Shariah Supervisory Board on Sukuk Pricing Benchmark," *International Journal of Excellence Islamic Banking & Finance* 6, no. 2 (2017): 29, https://www.researchgate.net/publication/335456089_The_Moderating_Role_of_Shariah_Supervisory_Board_on_Sukuk_Pricing_Benchmark_International_Journal_of_Excellence_in_Islamic_Banking_Finance_Essia_Ries_Ahmed_1.

²³Shahul Hameed et al., "Alternative Disclosure and Performance Measures for Islamic Banks," in *2nd Conference on Administrative Sciences: Meeting the Challenges of the Globalization Age* (Dhahran: King Fahd University, 2004), 22, <https://doi.org/10.1017/CBO9781107415324.004>.

²⁴Ahcene Lahsasna, *Shari'ah Non-Compliance Risk Management and Legal Documentation in Islamic Finance* (Singapore: John Wiley & Sons Singapore Pte, Ltd., 2014), 14.

²⁵Engku Rabiah Adawiah Engku Ali and Umar A. Oseni, "Towards An Effective Legal and Regulatory Framework for Islamic Financial Transactions: Major Initiatives of the Central Bank of Malaysia," *International Journal of Law and Management* 59, no. 5 (2017): 655, <https://doi.org/10.1108/IJLMA-04-2016-0038>.

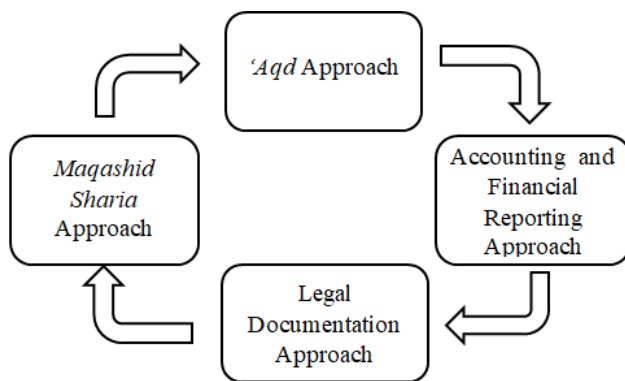
²⁶Ahmad Alkhamees, "The Impact of Shari'ah Governance Practices on Shari'ah Compliance in Contemporary Islamic Finance," *Journal of Banking Regulation* 14, no. 2 (2013): 137, <https://doi.org/10.1057/jbr.2012.12>.

²⁷Agus Arwani, "Issues and Challenges of Shariah Auditing in Islamic Financial Institution and Corporate Governance Compliance," *Media Riset Akuntansi, Auditing & Informasi* 18, no. 2 (2018): 172, <https://doi.org/10.25105/mraai.v18i2.3008>.

²⁸Zurina Shafii, Supiah Salleh, and Shahwan Hj Syahidawati, "Management of Shariah Non-Compliance Audit Risk in the Islamic Financial Institutions Via the Development of Shariah Compliance Audit Framework and Shariah Audit Programme," *Kyoto Bulletin of Islamic Area Studies* 3, no. 2 (2010): 6, <https://oarep.usim.edu.my/jspui/handle/123456789/20125>.

are acquired through four approaches, *'aqd* approach, *maqashid sharia* approach, legal documentation approach, accounting and financial reporting approach. These approaches and standards can be drawn up as follows:²⁹

Figure 2. Sharia Compliance Standards for Islamic Financial Transactions and Products



Source: Processed Data

First, the *'aqd* approach. This approach is based on the criterion that a product is sharia compliance when the product fully complies with the requirements of the present contract so that this contract is valid and binding on its contractors.³⁰ A valid contract is one in which its elements and conditions are met, the object of the contract is accepted by the rule of sharia, and there are no descriptions related to it that detract from its legitimacy.³¹

Second, the *maqashid sharia* approach. *Maqashid sharia* allows financial institutions to more accurately match their products and

²⁹Saiful Azhar Rosly, "Shariah Parameters Reconsidered," *International Journal of Islamic and Middle Eastern Finance and Management* 3, no. 2 (2010): 135, <https://doi.org/10.1108/17538391011054372>.

³⁰*Ibid.*, 136.

³¹Muhammad 'Uthman Shabir, *Al-Madkhal Ila Fiqh Al-Mu'amalat Al-Maliyyah: Al-Mal, Al-Milkiyyah, Al-'Aqd*, 2nd ed. (Amman: Dar Al-Nafais, 2010), 289.

businesses with the demands of Islamic ethics and thus justice, because *maqashid sharia* is based on obtaining benefit and removing harm in preserving all five necessities, and in preserving wealth in particular. The financial institution must ensure that it provides products and services that ward off evils as found in the Western style of finance, and the institution must work to bring interests by securing the benefits of mutual assistance and fair transactions, which are found in the correct trade contract.³² Allah has legislated to preserve wealth, from the rulings by preserving it from the side of materiality by controlling its development system and methods of circulation, as well as from the side of irreality by keeping away damage from it, preventing its false eating and waste, and provide security for it.³³

Third, the legal documentation approach. Contracts concern the realization of its pillars, in which the rights of the contracting parties were defined and made clear. Documents provide security and protection for them when their rights, duties, and responsibilities are clearly defined in the terms of the contract. The existence of documents and the documentation of contracts thus constitute a kind of consumer protection system.³⁴ Documentation has been initiated in financial transactions to preserve wealth, by keeping it away from disputes and causing damage to it, because documentation is a reason for maintaining and preserving it from loss and a means to cut off disputes, injustice, and suspicion between the parties and a way to maintain security in society.³⁵

Fourth, the accounting and financial reporting approach. Accounting is the record of financial inflows and outflows in various categories, including audits.³⁶ The purpose of financial reporting is to provide information about the financial strength, performance, and

³²Rosly, "Shariah Parameters Reconsidered," 137.

³³Iz Al-Din bin Zaghibah, *Maqasid Al-Shari'ah Al-Khashshah Bi Al-Tasharrufat Al-Maliyyah*, 1st ed. (Dubai: Markaz Jam'iyyat Al-Majid li Al-Tsaqafah wa Al-Turats, 2001), 103.

³⁴Rosly, "Shariah Parameters Reconsidered," 138.

³⁵Zaghibah, *Maqasid Al-Shari'ah Al-Khashshah Bi Al-Tasharrufat Al-Maliyyah*, 185.

³⁶Samir Alamad, *Financial and Accounting Principles in Islamic Finance* (Cham: Springer International Publishing, 2019), 77.

changes in the financial condition of an organization that benefits a wide range of users, from the board of directors, stakeholders, and others, in making economic decisions. This information works to remove the uncertainty and simplification of the financial contract through realistic reports of any transaction so that the financial reports clarify exactly what was traded in commercial transactions. Accounting information is used by investors to make economic decisions by predicting the future cash flows of the company or organization in which they invested. Financial reports must be understandable, reliable, and relevant to their business dealings or accounting categories.³⁷

The Making of Murabaha Bank Financing

Murabaha bank financing is a development of the murabaha that already existed in *fiqh al-mu'amalat*. Murabaha is a sharia-based product, which must follow the laws and mechanisms (including the elements and conditions) as well as the procedures for the implementation of the contract as defined in the *fiqh al-mu'amalat*.³⁸ In this context, when the Islamic bank offered to finance, it did not offer customers a loan contract but a deferred sale contract.³⁹

Islamic financial engineering has produced murabaha to the purchase order because it covers an aspect of the need that cannot be achieved through mudharaba and musharaka, so anyone that needs to buy something determines what he desires, and the bank buys at the request of him, as the bank in this is not a merchant who acquires goods and services, but a manager who manages the needs.⁴⁰ Islamic financial engineering also produced a *murabahah bil wakalah*, whereby the Islamic bank authorizes the customer to buy what he desires on behalf of the bank, and the bank immediately sells the

³⁷Rosly, "Shariah Parameters Reconsidered," 139.

³⁸M. Kabir Hassan and Michael Mahlknecht, *Islamic Capital Markets: Products and Strategies* (Chichester: John Wiley & Sons, Ltd., 2011), 37.

³⁹Hussein Kureshi and Mohsin Hayat, *Contracts and Deals in Islamic Finance: A Users Guide to Cash Flows, Balance Sheets, and Capital Structures* (Singapore: John Wiley & Sons Singapore Pte. Ltd., 2015), 29.

⁴⁰Mardhi bin Mushawwih Al-'Anzi, *Fiqh Al-Handasat Al-Maliyyah Al-Islamiyyah: Dirasah Ta'shiliyyah Tathbiqiyyah* (n.p.: Alukah Library, 2015), 33.

same commodity to the customer on a deferred sale basis.⁴¹

Yusuf Al-Qaradawi portrayed the murabaha to the purchase order simply and practically, someone went to the Islamic bank and told him that he wanted to buy a commodity with specific specifications, from a specific company, and he did not now have the price or only had a part of it. The bank replied that he will buy this commodity for him with the specifications from the party he appointed, provided that it earns a certain amount or a certain percentage, and pays within the specified period, but the sale does not take place until after the bank buys the said commodity and acquires it by the bank or through his agent, so that the sale is for what he already owned, as everything between the bank and the customer now dates to sell after owning and possessing the commodity.⁴²

Murabahah bil wakalah is a recent development on murabaha, in which the Islamic bank appoints the customer as his agent under wakala contract to purchase any permitted commodity that the customer wishes to purchase on behalf of the bank. The customer then provides the bank with the purchase invoice and the bank pays the purchase price. Here the bank purchases the commodity on behalf of the customer, but does not record the commodity in its book nor keep it in its warehouse, and immediately sells the said commodity to the customer on a deferred payment basis.⁴³ This financing is developed through hybrid contracts by adding the wakala contract shortly after the agreement on the murabaha contract,⁴⁴ or it is done by the inclusion of two separate contracts, the wakala contract first and then the murabaha contract after the completion of the wakala.⁴⁵

⁴¹Kureshi and Hayat, *Contracts and Deals in Islamic Finance: A Users Guide to Cash Flows, Balance Sheets, and Capital Structures*, 26.

⁴²Yusuf Al-Qaradawi, *Bay' Al-Murabahah Li Al-Amir Bi Al-Shira' Kama Tajrihi Al-Masharif Al-Islamiyyah*, 3rd ed. (Cairo: Maktabat Wahbah, 1995), 24.

⁴³Kureshi and Hayat, *Contracts and Deals in Islamic Finance: A Users Guide to Cash Flows, Balance Sheets, and Capital Structures*, 26.

⁴⁴Andi Rio Makkulau Wahyu and M. Wahyuddin Abdullah, "Penerapan Prinsip Syariah Dalam Akad Pembiayaan Murabahah Pada Bank Muamalat," *Jurnal Iqtisaduna* 3, no. 1 (2017): 63, <https://doi.org/10.24252/iqtisaduna.v3i1.4032>.

⁴⁵Ah. Azharuddin Lathif, "Konsep Dan Aplikasi Akad Murabahah Pada Perbankan Syariah Di Indonesia," *Ahkam: Jurnal Ilmu Syariah* 12, no. 2 (2012): 72, <https://doi.org/10.15408/ajis.v12i2.967>.

The 'Aqd Approach for Validity of Murabaha Financing

What Islamic banks referred to regarding the existence of the promise in the sale of bank murabaha in the form of murabaha to the purchase order, is the decision of the Islamic *Fiqh* Academy of the Organization of the Islamic Conference, held at its Fifth Conference session in Kuwait in 1988 regarding the fulfillment of the promise and murabaha for the purchase order. In the terms of the murabaha to the purchase order, promise is permissible on the condition that there is an option for the parties, both or one of them.⁴⁶ The same terms were also found in the legal standards issued by the AAOIFI regarding murabaha, in the third chapter, the acquisition of the asset or good by the institution before its sale using murabaha.⁴⁷

As for Islamic financing formulas, bankers refer to the *fiqh al-buyu'* to devise legal frameworks for bank's transactions, because the origin of murabaha financing is murabaha sale.⁴⁸ In order to comply with Islamic finance principles, a transaction needs to be bonafide among independent parties (supplier, buyer, and financier). In the most popular mode of financing in a murabaha sale, an Islamic bank sells the goods financed with predetermined tenor and sale prices that cannot be changed afterward, even if the repayment is delayed.⁴⁹

To ensure profitability and save their financial performance from loss and crisis, Islamic banks should not totally rely on collateral as a reason for expanding the provision of murabaha financing mode, because in case of the value of collateral decreased against the finance, will lead to credit risk and reduces the performance.⁵⁰ Islamic banks

⁴⁶ Ali Ahmad Al-Salus, *Mawsu'at Al-Qadhaya Al-Fiqhiyyah Al-Mu'ashirah Wa Al-Iqtishad Al-Islami*, 7th ed. (Doha: Dar Al-Thaqafah, 2002), 602.

⁴⁷ AAOIFI, *The Accounting and Auditing Organization for Islamic Financial Institutions Shari'ah Standards* (Manama: AAOIFI, 2015), 206.

⁴⁸ Abdul Hamid Abdul Fattah Al-Maghribi, *Al-Idarah Al-Istiratiyyah Fi Al-Bunuk Al-Islamiyyah* (Jeddah: Islamic Research dan Training Institution Islamic Development Bank, 2004), 141.

⁴⁹ Diallo and Gundogdu, "Islamic Financial Product Development in the Context of Education and Health," 135.

⁵⁰ Omer Allagabo Omer Mustafa, "Assessment of the Financial Performance of Islamic Commercial Banks in Sudan Under Credit Risk and Inflation Pressures (1995-2017)," *Journal of Islamic Banking and Finance* 7, no. 1 (2019): 17, <https://doi.org/10.15640/jibf.v7n1a2>.

could increase their financing of murabaha transactions to boost their profitability and compensate for high credit risk exposure. There is also the need to review the costs of other products of Islamic banks, which tends to affect the repayment ability of the customers,⁵¹ even though the collateral will guarantee the ongoing financing.⁵²

The scope of sharia compliance is not limited to the attestation of fair representation of financial aspects of an organization, it is also, and more importantly to ensure that sharia controls are conceptually sound and effective in ensuring Islamic values and sharia principles of financial transactions.⁵³ The sale of murabaha made by the bank should not involve a guaranteed profit as the bank sold the commodity and made a profit before taking it over. This is because murabaha is not a guaranteed profit sale, as the bank bought the commodity and became the owner of it, it bears the burden of loss and the burden of the defect, and carrying these risks is one of the legitimate reasons for deserving of the profit.^{54 55}

The Maqashid Sharia in Murabaha Bank Financing

Murabaha bank financing is a kind of financial transaction, and what is attributed to be mentioned here is what Sheikh Ibn 'Ashur said that the *maqashid sharia* in wealth are five things, its circulation,

⁵¹Abdulrazaq T. Jimoh, John A. Attah, and Aliyu I. Nafiu, "Murabaha-Related Credit Risk and Financial Performance of Islamic Banks in Africa," *International Journal of Islamic Banking and Finance Research* 5, no. 1 (2021): 63, <https://doi.org/10.46281/ijibfr.v5i1.1279>.

⁵²Muhammad Fahmul Iltiham and Nur Iva Apriliyah, "Optimizing Insurance and Guarantees for Deceased Customers in Murabaha Financing: A Comprehensive Analysis," *Malia: Jurnal Ekonomi Islam* 14, no. 1 (2022): 145, <https://doi.org/10.35891/ml.v14i1.3858>.

⁵³Issam Tlemsani, Farhi Marir, and Munir Majdalawieh, "Screening of Murabaha Business Process Through Quran and Hadith: A Text Mining Analysis," *Journal of Islamic Accounting and Business Research* 11, no. 9 (2020): 1892, <https://doi.org/10.1108/JIABR-05-2020-0159>.

⁵⁴Izzeddin Mohamed Khouja, *Al-Dalil Al-Shari Li Al-Murabahah*, 1st ed. (n.p.: Shirkah Al-Barakah li Al-Istithmar wa Al-Tanmiyah, 1998), 39.

⁵⁵Mohamed Ahmed Samireh, "Murabaha to Purchase Orderer Between Theory and Practice," *Social Mentality and Researcher Thinkers Journal* 6, no. 32 (2020): 828, <https://doi.org/10.31576/smryj.475>.

its clarity, its preservation, its stability, and justice in it.^{56 57} The other aspects of the *maqashid sharia* concerning transaction law in Islam are *mashlahah* and *raf' al-haraj* (removal of hardship).^{58 59 60}

The commonly perceived idea of the *mashlahah* perspective in murabaha, is that it helps the community to carry out and improve welfare and various activities, by selling an item by confirming its purchase price to the buyer and the buyer pays it at a price more as profit.⁶¹ On the other side, products in the form of murabaha financing as an alternative to conventional transaction systems based on interest, make murabaha contract contained *mashlahah* value of public interest, so that economic behaviour does not fall prey to prohibited practices.⁶² As for the *raf' al-haraj*, achieving the *maqashid sharia* should be considered as the main priority instead of over-emphasizing on technical aspects of the rulings, which can cause a lot of hardship.⁶³ On the other side, the removal of hardship also offers higher social benefits,⁶⁴ so it conforms to the above mentioned principle of public interest. In this regard, sharia compliance murabaha should be contributing to the removal of hardship in the bank's consumers

⁵⁶Mohammad bin Salih bin Hamid, "Al-Maqasid Al-Shariyyah Fi Al-Muamalat Al-Masrafiyyah Wa Tatbiqatiha," *Majallah Kulliyah Al-Iqtisad Wa Al-Ulum Al-Siyasiyyah* 35, no. 2 (2023): 806, <https://doi.org/10.21608/jfsu.2023.174030.1081>.

⁵⁷Muhammad Al-Thahir Ibn 'Ashur, *Maqashid Al-Shari'ah Al-Islamiyyah* (Beirut: Dar Al-Kitab Al-Lubnani, 2011), 306.

⁵⁸Amrulla Hayatudin and Panji Adam, "Application of Maqasid Al-Shari'ah in Murabahah Contract in Sharia Financial Institutions," *Indonesian Journal of Islamic Economics Research* 2, no. 2 (2020): 88, <https://doi.org/10.18326/ijier.v2i2.4311>.

⁵⁹Suzuki and Miah, "Shari'ah-Compliant Benchmark and Shari'ah-Based Raf' Al-Haraj Benchmark on Prohibition of Riba," 157.

⁶⁰Muhammad Shahrul Ifwat Ishak and Nur Syahirah Mohammad Nasir, "Maqasid Al-Shari'ah in Islamic Finance: Harmonizing Theory and Reality," *The Journal of Muamalat and Islamic Finance Research* 18, no. 1 (2021): 111, <https://doi.org/10.33102/jmifr.v18i1.334>.

⁶¹Susi Aryani Manangin et al., "The Nature of Murabahah Financing in Islamic Banking in Indonesia," *IOSR Journal of Humanities and Social Science (IOSR-JHSS)* 25, no. 7 (2020): 19, <https://doi.org/10.9790/0837-2507071630>.

⁶²Hayatudin and Adam, "Application of Maqasid Al-Shari'ah in Murabahah Contract in Sharia Financial Institutions," 89.

⁶³Ishak and Nasir, "Maqasid Al-Shari'ah in Islamic Finance: Harmonizing Theory and Reality," 112.

⁶⁴Suzuki and Miah, "Shari'ah-Compliant Benchmark and Shari'ah-Based Raf' Al-Haraj Benchmark on Prohibition of Riba," 158.

through the function of wealth creation.⁶⁵

Principles of Documentation for Murabaha Financing Contract

The documents have two functions, firstly, as official legal function, meaning that the judicial work becomes more complete when the document is present for it. And secondly as a mean of proof or testimony by the contracting parties to the future contract.⁶⁶ In this document, the contractors agreed on the contract in particular on the terms and conditions. Therefore, if one or both parties to the contract are unable to fulfill their obligations, each or both accept the penalties agreed upon in the contract.⁶⁷

The validity of the contract in writing depends on the validity of the document written for it, and the validity of the document depends on the fulfillment of the conditions and contents of it.⁶⁸ The failure of contract documents to comply with sharia contractual obligations exposes the contractual parties to the risk of non-sharia compliance, it is the same as if the contracting parties fail to comply with sharia.⁶⁹ This is fundamental, as the legal consequences emerging from a contract are directly related to the compliance of formats and materials with Islamic law principles and requirements.⁷⁰ In this regard, the Sharia Supervisory Board has to oversee the contract document drafted, to declare that there has or hasn't been a violation of sharia principles, and has to check regularly on the implication of

⁶⁵Ibid., 159.

⁶⁶Muhammad, *Bisnis Syariah: Transaksi Dan Pola Pengikatannya*, 1st ed. (Depok: Rajawali Press, 2018), 269.

⁶⁷Muhammad, *Manajemen Bank Syariah*, 2nd ed. (Yogyakarta: UPP Sekolah Sekolah Tinggi Ilmu Manajemen YKPN, 2011), 85.

⁶⁸Muhammad, *Bisnis Syariah: Transaksi Dan Pola Pengikatannya*, 274.

⁶⁹Nurul Syazwani Mohd. Noor, Muhammad Hakimi Mohd. Shafiai, and Abdul Ghafar Ismail, "The Derivation of Shariah Risk in Islamic Finance: A Theoretical Approach," *Journal of Islamic Accounting and Business Research* 10, no. 5 (2019): 666, <https://doi.org/10.1108/JIABR-08-2017-0112>.

⁷⁰Rusdi Salam Januardi and Burhanudin Harahap, "Legal Aspect of Sharia Investment and Working Capital Financing (A Case Study in Murabaha Contract in Micro Capital Service Unit of Daleman Syari'ah of PT. Permodalan Nasional Madani (Persero) Solo Branch)," *South East Asia Journal of Contemporary Business, Economics, and Law* 24, no. 5 (2021): 151, <https://seajbel.com/wp-content/uploads/2021/10/SEAJBEL24.ISU-5-861.pdf>.

said contract document so that the positive legal aspects and sharia law can be fulfilled.⁷¹

Principles of Accounting and Financial Reports in the Islamic Bank for Murabaha

Accounting represents the examination and evaluation of documentary cycles, accounting books, records, reports, and the like, to ensure their efficiency in preserving the bank's funds and depositors' funds, and to develop them in legitimate ways, as well as to ensure that the data and information are honest and true and can be relied upon in making administrative decisions, especially performance, investment, financing, and differentiation decisions from various alternatives.⁷² An expansion of innovative hybrid products such as murabaha financing requires careful consideration as to their legitimacy in order to protect consumers' interests, sharia compliance, and financial inclusiveness.⁷³

Because the nature of the Islamic bank's activity and operations is based mainly on the profit and loss sharing system and the difference in returns from one operation to another according to the terms of its contract and its results, the accounting process in the Islamic bank extends to reviewing the operations to ensure the implementation of the contract for each of the murabaha, mudharaba, musharaka operations, and so on. It also extends to achieving the soundness of the distributions decided by the bank's management to the holders of investment accounts, taking into account that these distributions may be quarterly or at intervals throughout the bank's fiscal year, and this is related to the shareholder's share of the surpluses generated and distributed to them. Such accounting shall be registered in the register of an external accountants and auditors.⁷⁴

⁷¹Abi Waqqosh et al., "The Role of the Sharia Supervisory Board (DPS) in Supervision of Contract Implementation at the Binjai Branch BRI Sharia," *E-Mabis: Jurnal Ekonomi Manajemen Dan Bisnis* 22, no. 1 (2021): 74, <https://doi.org/10.29103/e-mabis.v22i1.657>.

⁷²Al-Maghribi, *Al-Idarah Al-Istiratijiyyah Fi Al-Bunuk Al-Islamiyyah*, 256.

⁷³M. Kabir Hassan et al., "A Survey on Islamic Finance and Accounting Standards," *Borsa Istanbul Review* 19, no. 1 (2019): 4, <https://doi.org/10.1016/J.BIR.2019.07.006>.

⁷⁴Al-Maghribi, *Al-Idarah Al-Istiratijiyyah Fi Al-Bunuk Al-Islamiyyah*, 364.

The abovementioned standards are based on the bank's financial disclosure for the National Financial Authority as well as for public information. As for accounting for murabaha financing for the purpose of internal auditing, information about murabaha-related disclosure should contain financial statements relating to the bank including the following points: (1) The value of assets when executing the murabaha measured at historical cost; (2) The clarifications that murabaha receivables (deferred sales receivables) are measured when cost occurs; (3) It was mentioned that the profits of murabaha were completed when contracting, with no distribution within the periods coming; (4) The deferred profit is not deducted from the murabaha receivable; (5) There is no clear treatment for early repayment if it occurs; (6) There is no clear handling of cases of customer insolvency or delay in payment if any.⁷⁵

Conclusion

The sharia compliance of murabaha financing is based on four approaches, namely the *'aqd* approach, *maqashid sharia* approach, the documentation approach, and the accounting and financial reporting approach. The *'aqd* approach states that the murabaha transaction should be bonafide among independent parties (supplier, buyer, and financier) and not involve a guaranteed profit. As for the *maqashid sharia* approach, besides ensuring *maqashid sharia* in wealth (its circulation, its clarity, its preservation, its stability, and justice in it), the murabaha should ensure public interest as well as to contribute to the removal of hardship. In the documentation approach, the form and the materials of the contract documented for murabaha should comply with the principle and requirements of the contract according to Islamic law and has to be overseen by the Sharia Supervisory Board in drafting. And for the accounting and financial reporting approach, the information disclosure should contain the value of assets when

⁷⁵Khansaa Naser Hussaina and Alaa Fareed Abdulahad, "The Extent of the Application of Internal Auditing Standards in Iraqi Commercial Banks," *International Journal of Professional Business Review* 7, no. 3 (2022): 88, <https://doi.org/10.26668/businessreview/2022.v7i3.600>.

executing the murabaha, clarifications that murabaha receivables are measured on the cost, the profits of murabaha were completed when contracting, the deferred profit is not deducted from the murabaha receivable, there is no clear treatment for early repayment if it occurs, and there is no clear handling of cases of customer insolvency or delay in payment if any.

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The Sources of Islamic Law on the Muamalah Concept About Contract Viewed on Philosophical Studies

May Shinta Retnowati

(Corresponding Author)

University of Darussalam Gontor, Indonesia

Email: mayshinta@unida.gontor.ac.id

Musta'an Al Faruqi

Istanbul Sabahattin Zaim University, Turkey

Email: isman6887@gmail.com

Syahrul Ihsan

University of Darussalam Gontor, Indonesia

Email: syahrulihسان@gmail.com

Abstract

Islamic law of the contract is used as the basis for muamalah transaction, which is oriented towards developing a general theory of Islamic law. This research is significant because of the birth of sharia institutions based on the provisions of Islamic contract and muamalah, as well as the growing business of Muslims accompanied by the emergence of a desire to harmonize business as a modern phenomenon, with the sharia principle. The methodology of this research, including normative Islamic law research, is to obtain concrete legal regulations which are the development of norms between Islamic legal doctrines, which are also derived from basic values in Al-Qur'an and Sunnah. The result is, based on the Islamic contract in Indonesia, several are used as basis in carrying out and forming the Islamic contract law. The purpose of implementing muamalah in philosophy is a contract that upholds socio-economic justice and income/welfare justice which are considered important components of Islamic moral philosophy. Islamic economic philosophy in this regard can be summarized in three aspects namely at-tauhid, al-'adalah, and maslahah, where the source of law is Al-Qur'an and Sunnah.

Keywords: *Philosophy; Civil Law; Islamic Contract Law*

Abstrak

Hukum Islam dalam akad digunakan sebagai dasar transaksi muamalah, yang berorientasi pada pengembangan teori umum hukum Islam. Penelitian ini penting karena lahirnya lembaga syariah berdasarkan ketentuan kontrak Islam dan muamalah, serta berkembangnya bisnis umat Islam disertai dengan munculnya keinginan untuk menyelaraskan bisnis sebagai fenomena modern, dengan prinsip syariah. Metodologi dalam penelitian ini termasuk pada penelitian hukum Islam normatif, yakni untuk mendapatkan peraturan hukum yang konkret yang merupakan pengembangan norma-norma antara doktrin hukum Islam, yang juga diturunkan dari nilai-nilai dasar dalam Al-Qur'an dan Sunnah. Hasil yang didapat, berdasarkan akad Islam di Indonesia, beberapa digunakan sebagai dasar dalam menjalankan dan membentuk hukum kontrak Islam. Tujuan pelaksanaan muamalah pada filsafat adalah kontrak yang menjunjung tinggi keadilan sosial ekonomi dan keadilan pendapatan/kesejahteraan yang dianggap sebagai komponen penting dari filsafat moral Islam. Filsafat ekonomi Islam dalam hal ini dapat diringkas dalam tiga aspek yaitu at-tauhid, al-'adalah, dan maslahah di mana sumber hukumnya adalah Al-Qur'an dan Sunnah.

Kata Kunci: Filsafat; Hukum Perdata; Hukum Kontrak Islam

Introduction

Human relationships with the others are always associated social relations, economic relations, religious relations, etc. The term of the contract if it is related to the social or economic, then the term becomes an contract or agreement. There are those who say that the contract is more general and universal which covers all aspects while the agreement is more special or private such as contractual agreements, loans, and so on. The contract is viewed from the development of law in Indonesia can be seen from three aspects, namely customary law, positive law, and Islamic law. Each of these laws has differences in accordance with the origin of the law but it is inevitable that there are similarities in some parts of the law. In a business contract, for example, it is a business cooperation that must done in written form although there is also an oral contract, but the contract is made in a written manner. The oral carries a very high risk, because it can have difficulties in evidence in case of legal disputes.¹

¹May Shinta Retnowati, "Konsep Essensialia Pada Prinsip Pembuatan Kontrak Dalam Perikatan," *Jurnal Indonesian Comparative of Syariah Law: Jurnal Ilmu Syariah Dan*

In Indonesia every law must have legal sources. As Muslims also have true guidelines that they must obey, these provisions have been regulated in the Al-Qur'an and Sunnah of the Prophet Muhammad Saw. As for the logical consequences for Muslims to understand well and correctly which is fully in the form of the truth of Islamic teachings striving to practice it in various activities is evidence of submission to Allah Swt. commandments and prohibitions, as in Al-Qur'an surah Az-Zariyat verse 56:

وَمَا خَلَقْتُ الْجِنَّ وَالْإِنْسَ إِلَّا لِيَعْبُدُونِ

"And I did not create the jinn and mankind except to worship Me".

The agreement in customary law is a law that refers to the habits of people in certain areas by adhering to the customs carried out in the community group. Western law (positive law) is a law that refers to the laws that apply in Europe that were brought during the Dutch colonial era to Indonesia. The purpose of the law is to regulate society so that security and comfort in society can be achieved. Customary law and positive law applied in Indonesia can be applied to all circles of society, even though it is Muslim or non-Muslim, but essentially the law can be implemented in Muslim communities, if it does not conflict with Islamic law.² As well as *muamalah* transactions related to contracts, Muslim should still follow the rules rather than the law that has passed.³

In the determination of a law other than coming from the source of the law itself, both positive and Islamic law must show good values that are able to achieve wisdom and justice, this is called the concept of philosophy. An *ulil amri* in determining what laws will be accepted by their people, they must be able to think broadly in achieving truth

Ilmu Hukum 4, no. 1 (2021): 81, <https://doi.org/10.21111/jicl.v4i1.6194>.

²Salim H. S., *Hukum Kontrak: Teori & Teknik Penyusunan Kontrak* (Jakarta: Sinar Grafika, 2014), 22.

³May Shinta Retnowati, "The Dimensions of Legal Opinion's Role in Settlement of Civil Law Cases," *Legal Brief* 11, no. 2 (2022): 571, <https://legal.isha.or.id/index.php/legal/article/view/172>.

and justice so as to have an impact on the welfare of their people.⁴

The source of the law contains certain elements to achieve an expected goal from the emergence of the law, as well as Islamic law, especially regarding contracts. This research aim to describe the philosophical review of the sources of Islamic law related to contracts, resulting in the importance of contracts rather than *muamalah* transactions.

Methodology

This research is a normative-philosophical research which is qualitative. This normative-philosophical juridical research refers to the philosophical basis of the philosophical values like as of the doctrine of the binding force of the contract. With this research method, the legal history of the legal basis for the doctrine power of the contract. It was also carried out this research also explores the basis and source of the application of these principles. The research method used in this paper is library research, where this research focuses on collecting data and also on referring to previous articles and literacy related to Islamic law in Indonesia.⁵ Literature research is research that requires more philosophical and theoretical processing. With an important step where after a researcher determines the research topic, the next step is to conduct a philosophical study and references related to the research conducted.⁶

Results and Discussion

Islamic Contract Law

Islamic law of the contract studies is part of Islamic law in the field of *muamalah* transaction which regulates human behavior in carrying out economic relations. As the positive law, the contract

⁴Saiful Anwar, "Evaluasi Pendidikan Menuju Insan Kamil Perspektif Filsafat Islam," *Jurnal Pendidikan Nusantara* 1, no. 1 (2022): 64, <https://doi.org/10.55080/jpn.v1i1.7>.

⁵Devid Frastiawan Amir Sup, "Tinjauan Masalahah Terhadap Amdal," *Muslim Heritage* 4, no. 1 (2019): 40–41, <https://doi.org/10.21154/muslimheritage.v4i1.1724>.

⁶Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D* (Bandung: Alfabeta, 2017), 291.

classification Article 1234 of the Civil Code is to give something, to do something, or not to do something. According to Prof. Dr. H. M. Tahir Azhary, S.H., Islamic contract law is a set of legal rules sourced from the Al-Quran and Sunnah, and *ar-ra'yu (ijtihad)* which regulates the relationship between two or more people regarding an object that is lawful to be the object of a transaction.⁷

The *iltizam* (Islamic contract law) wider scope than positive law. This can be seen from the relationship between the law of contract itself and the Islamic law that surrounds it, which not only regulates the relationship between humans, but also the relationship between humans and God and with their natural environment.⁸ In Dutch, the contract is called *verbintenis* while the agreement is called *overeenkomst* as the term is commonly used by legal experts.⁹ The term of the contract also has the same word in Arabic, namely *iltizam* or *'aqdun*. In English, contract has a meaning related to words such as contract, agreement, obligation, and duty (Digital Dictionary). So it can be interpreted that the contract is closely related to the agreement, responsibility, obligation, and trust.

The sources of Islamic law consist of three sources of law, namely the Al-Quran and Sunnah (as the two main sources) and *ar-ra'yu* or human reason which is collected in *ijtihad*. Al-Quran, as one of the first major sources of Islamic law in this Islamic contract law, most of Al-Qur'an only regulates general rules. In the law of contract has a subject and object as described below: (1) The subject of the contract (*al-aqidain*): (a) Humans, as legal subjects of the contract, are parties who can be burdened by law, which is called the *mukallaf*; (b) Legal entity, is an entity that is considered to be able to act under the law and which has rights, obligations, and legal relations towards other people or legal entities; (2) The object of the contract (*al-ma'qud alaih*), the contract object can be in the form of tangible objects, such

⁷Muhammad Tahir Azhary, *Negara Hukum: Suatu Studi Tentang Prinsip-Prinsipnya Dari Segi Hukum Islam, Implementasinya Pada Periode Negara Madinah, Dan Masa Kini* (Jakarta: Kencana Prenada Media Group, 2004), 81.

⁸Gemala Dewi, *Hukum Perikatan Islam Indonesia* (Jakarta: Kencana Prenada Media Group, 2005), 33.

⁹Syamsul Anwar, *Hukum Perjanjian Islam: Studi Tentang Teori Akad Dalam Fiqih Muamalah* (Jakarta: PT Raja Grafindo Persada, 2007), 56.

as cars and houses, or intangible objects, such as benefits.¹⁰

The sources of Islamic contract law. *First*, Al-Qur'an. As one of the main sources of Islamic law, Al-Qur'an only regulates general rules regarding contract. This can be seen, among others, in the following verses:

Al-Qur'an surah Al-Maidah verse 1:

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ

"O you who have believed, fulfill (all) contracts".

Al-Qur'an surah An-Nisa verse 29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O you who have believed, do not consume one another's wealth unjustly but only (in lawful) business by mutual consent. And do not kill yourselves (or one another). Indeed, Allah is to you ever Merciful".

Second, Hadith, "Allah Swt. has said (in His hadith qudsi), "I am the third of two people who are united as long as one of them does not betray his friend. If one of them betrays, then I leave the union of the two" (Hadith Riwayah Abu Dawud and Hakim).

As for determining a legal proposition that can be used as a guideline for a contract carried out by the community, Then *istishab* can be done in *muamalah*. *Istishab* is a legal proposition that preserves a legal provision that existed in the past until there is a postulate that changes it. As some *ulama* state, if *istishab* can be used as an absolute legal proposition, as in a contract of which no type is found in the Al-Qur'an or Sunnah, then the contract is permissible. Besides that, there is an *urf*, or a habit, of the community, and it has been lived in aspects of their lives. The majority of scholars state that *urf* can also

¹⁰R. Subekti and R. Tjitrosudibio, *Kitab Undang-Undang Hukum Perdata* (Jakarta: PT Dnya Paramita, 2015), 89.

be used as a legal proposition.¹¹ For example, the sale of watermelon is given as an example of the taste of the fruit sold. *Sadd al-dzariah* is the conclusion of the means, the point here is to close all permissible aspects (*mubah*) which will later cause loss or harm.¹² Just like a person who is in bankruptcy is prohibited from making transactions on the property he owns because of the consideration to avoid losses that will occur. The other legal proposition is *shar'u man qablana*, which is the sharia of the people before Islam as in the activities of *syirkah* carried out by mankind before the coming of Islam.¹³ The last legal proposition is *mahdzab shahaby* which is the opinion of the companions of the Rasulullah Saw. on a matter, both in the form of *fatwas* and other legal provisions that *nash* does not explain the law. While the source of positive law of contract in Chapter II Book III of the Civil Code which explains that, "*Engagement is the origin of a contract or agreement*".¹⁴

The Principles of Islamic Contract Law

First, divine principle (*illahiyah*). Every human behavior and actions will not escape the provisions of Allah Swt. *Muamalah* activities, including contract actions, will never be separated from the values of monotheism. Thus, humans have a responsibility for this. Responsibility to the community, responsibility to the second party, responsibility to oneself, and responsibility to Allah Swt. As a result, humans will not do as they please, because all their actions will get a reply from Allah Swt.¹⁵

Second, the principle of freedom. As mentioned in Al-Qur'an surah Al-Hadid verse 4:

¹¹Abdul Rachman, "Dasar Hukum Kontrak (Akad) Dan Implementasinya Pada Perbankan Syariah Di Indonesia," *Jurnal Ilmiah Ekonomi Islam (JIEI)* 8, no. 1 (2022): 50, <https://doi.org/10.29040/jiei.v8i1.3616>.

¹²Muhamad Takhim, "Saddu Al-Dzari'ah Dalam Muamalah Islam," *AKSES: Jurnal Ekonomi Dan Bisnis* 14, no. 1 (2019): 19, <https://doi.org/10.31942/akses.v14i1.3264>.

¹³Roudotul Jannah, "Analisis Kafalah Dalam Al-Qur'an Dan Hadits, Serta Implementasinya Pada Lembaga Keuangan," *Jurnal Ekonomi Rabbani* 2, no. 2 (2022): 307, <https://doi.org/10.53566/jer.v2i2.122>.

¹⁴Retnowati, "Konsep Essensialia Pada Prinsip Pembuatan Kontrak Dalam Perikatan," 23.

¹⁵Akhmad Hulaify, "Asas-Asas Kontrak (Akad) Dalam Hukum Syari'ah," *At-Tadbir: Jurnal Ilmiah Manajemen* 3, no. 1 (2019): 50, <https://doi.org/10.31602/atd.v3i1.1801>.

وَهُوَ مَعَكُمْ أَيْنَ مَا كُنْتُمْ وَاللَّهُ بِمَا تَعْمَلُونَ بَصِيرٌ

"And He is with you wherever you are. And Allah, of what you do, is Seeing".

Islam gives freedom to the parties to enter into an contract. The form and content of the contract is determined by the parties. If the form and content have been agreed upon, then the agreement is binding on the parties who agreed to it and all rights and obligations must be carried out. But this freedom is not absolute. As long as it does not conflict with Islamic sharia, the contract may be carried out.¹⁶

Third, the principle of equality. An act of *muamalah* is one way to meet human needs. It often happens that one person has an advantage over the other. As stated in Al-Qur'an surah An-Nahl verse 71:

وَاللَّهُ فَضَّلَ بَعْضَكُمْ عَلَى بَعْضٍ فِي الرِّزْقِ

"And Allah has favored some of you over others in provision".

This shows that among human beings each has advantages and disadvantages. For that, between humans with one another should complement each other's shortcomings from the advantages they have. Therefore, every human being has the same opportunity to perform an contract. In carrying out this contract, the parties determine their respective rights and obligations based on this principle of equality. There should be no injustice done in the contract.¹⁷ The realization of justice is always related to the distribution that exists in people's lives. As in the contract, it must uphold justice in order to achieve equitable benefit.

Fourth, the principle of justice. The term justice cannot be equated with equality. According to Yusuf Qardhawi, justice is a balance between various individual potentials, both moral and material, between individuals and society, and between communities

¹⁶Ibid., 51.

¹⁷Sugiarto Raharjo Japar, "Prinsip-Prinsip Kontrak Kontruksi Indonesia," *Mimbar Yustitia* 2, no. 2 (2018): 194, <https://doi.org/10.52166/mimbar.v2i2.1410>.

based on Islamic sharia.¹⁸ In this principle, the parties to the contract are required to act correctly in the disclosure of their will and circumstances, fulfill the agreement they have made and fulfill all their obligations.¹⁹

Fifth, the principle of willingness. In Al-Qur'an surah An-Nisa verse 29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O you who have believed, do not consume one another's wealth unjustly but only (in lawful) business by mutual consent. And do not kill yourselves (or one another). Indeed, Allah is to you ever Merciful".

This verse stated that all transactions carried out must be on the basis of consensual or voluntary consent between each party, there must be no pressure, coercion, or fraud. This principle encompasses everything. The shape of the transaction must be determined by the willingness of all parties. The willingness of the contracting parties is the soul of every Islamic contract and is considered a condition for the completion of all transactions. If this concept is not followed in a transaction, it is regarded as having eaten something for vanity (*al-akl bil-batil*).²⁰

Sixth, the principle of honesty and truth. Being honest and true distinguishes a believer from a believer from a believer, like in the verse above. As Allah Swt. reveals in Al-Qur'an surah Al-Baqarah verse 177, having an honest and sincere nature is one of the essentials for a pious person:

¹⁸Yusuf Qardhawi, *Dawr Al-Qiyam Wa Al-Akhlaq Fi Al-Iqtisad Al-Islami*, Al-Tab'ah 1 (Kairo: Maktabat Wahbah, 1995), 145.

¹⁹Momon Ardiansyah, Siti Hamidah, and Dewi Astuti Mochtar, "Perwujudan Asas Keadilan Dan Keseimbangan Dalam Pembuatan Akta Persekutuan Komanditer Berdasarkan Akad Mudharabah," *Jurnal Ilmiah Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 2 (2019): 324, <https://doi.org/10.17977/um019v4i2p321-327>.

²⁰Rachman, "Dasar Hukum Kontrak (Akad) Dan Implementasinya Pada Perbankan Syariah Di Indonesia," 53.

لَيْسَ الْبِرَّ أَنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ آمَنَ بِاللَّهِ
وَالْيَوْمِ الْآخِرِ وَالْمَلَائِكَةِ وَالْكِتَابِ وَالنَّبِيِّينَ وَآتَى الْمَالَ عَلَى حُبِّهِ ذَوِي الْقُرْبَى
وَالْيَتَامَى وَالْمَسْكِينِ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ وَأَقَامَ الصَّلَاةَ وَآتَى الزَّكَاةَ
وَالْمُوفُونَ بِعَهْدِهِمْ إِذَا عَاهَدُوا وَالصَّابِرِينَ فِي الْبَأْسَاءِ وَالضَّرَاءِ وَحِينَ الْبَأْسِ أُولَئِكَ
الَّذِينَ صَدَقُوا وَأُولَئِكَ هُمُ الْمُتَّقُونَ

"Righteousness is not that you turn your faces toward the east or the west, but (true) righteousness is (in) one who believes in Allah, the Last Day, the angels, the Book, and the prophets and gives wealth, in spite of love for it, to relatives, orphans, the needy, the traveler, those who ask (for help), and for freeing slaves; (and who) establishes prayer and gives zakah; (those who) fulfill their promise when they promise; and (those who) are patient in poverty and hardship and during battle. Those are the ones who have been true, and it is those who are the righteous".

Honesty is something that must be done by humans in all areas of life, including in the implementation of *muamalah*. If this honesty is not applied in the contract, it will damage the legality of the contract itself. In addition, if there is dishonesty in the contract, it will cause a dispute between the parties.²¹

Seventh, written principles. In Al-Qur'an surah Al-Baqarah verse 282-283:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا تَدَايَنْتُمْ بِدَيْنٍ إِلَى أَجَلٍ مُسَمًّى فَاكْتُبُوهُ وَلْيَكْتُبَ بَيْنَكُمْ
كَاتِبٌ بِالْعَدْلِ وَلَا يَأْبَ كَاتِبٌ أَنْ يَكْتُبَ كَمَا عَلَّمَهُ اللَّهُ فَلْيَكْتُبْ وَلْيُمْلِلِ الَّذِي
عَلَيْهِ الْحَقُّ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا بَيْخَسَ مِنْهُ شَيْءٌ فَإِنْ كَانَ الَّذِي عَلَيْهِ الْحَقُّ سَفِيهًا
أَوْ ضَعِيفًا أَوْ لَا يَسْتَطِيعُ أَنْ يُمْلَ هُوَ فَلْيُمْلِلْ وَلِيُّهُ بِالْعَدْلِ وَاسْتَشْهِدُوا شَهِيدَيْنِ
مِنْ رَجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ مِمَّنْ تَرْضَوْنَ مِنَ الشُّهَدَاءِ أَنْ
تَضِلَّ أَحَدُهُمَا فَتَذَكَّرَ أَحَدُهُمَا الْأُخْرَى وَلَا يَأْبَ الشُّهَدَاءُ إِذَا مَا دُعُوا وَلَا تَسْمُوا

²¹Muhammad Noor, "Penerapan Prinsip-Prinsip Hukum Perikatan Dalam Pembuatan Kontrak," *Mazahib: Jurnal Pemikiran Hukum Islam* 14, no. 1 (2015): 92, <https://doi.org/10.21093/mj.v14i1.338>.

أَنْ تَكْتُبُوهُ صَغِيرًا أَوْ كَبِيرًا إِلَى أَجَلِهِ ذَلِكُمْ أَقْسَطُ عِنْدَ اللَّهِ وَأَقْوَمُ لِلشَّهَادَةِ وَأَدْنَى
أَلَّا تَرْتَابُوا إِلَّا أَنْ تَكُونَ تِجَارَةً حَاضِرَةً تُدِيرُونَهَا بَيْنَكُمْ فَلَيْسَ عَلَيْكُمْ جُنَاحٌ
أَلَّا تَكْتُبُوهَا وَأَشْهَدُوا إِذَا تَبَايَعْتُمْ وَلَا يُضْلِلَ كَاتِبٌ وَلَا شَهِيدٌ ۖ وَإِنْ تَفْعَلُوا فَإِنَّهُ
فُسُوقٌ بِكُمْ وَاتَّقُوا اللَّهَ وَيُعَلِّمُكُمُ اللَّهُ وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ ۝ وَإِنْ كُنْتُمْ
عَلَى سَفَرٍ وَلَمْ تَجِدُوا كَاتِبًا فَرِهْنِ مَقْبُوضَهُ فَإِنْ أَمِنَ بَعْضُكُم بَعْضًا فَلْيُؤَدِّ الَّذِي
أُؤْتِنَ أَمَانَتَهُ وَلْيَتَّقِ اللَّهَ رَبَّهُ وَلَا تَكْتُمُوا الشَّهَادَةَ وَمَنْ يَكْتُمْهَا فَإِنَّهُ آثِمٌ قَلْبُهُ
وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

"O you who have believed, when you contract a debt for a specified term, write it down. And let a scribe write (it) between you in justice. Let no scribe refuse to write as Allah has taught him. So let him write and let the one who has the obligation dictate. And let him fear Allah, his Lord, and not leave anything out of it. But if the one who has the obligation is of limited understanding or weak or unable to dictate himself, then let his guardian dictate in justice. And bring to witness two witnesses from among your men. And if there are not two men (available), then a man and two women from those whom you accept as witnesses - so that if one of the women errs, then the other can remind her. And let not the witnesses refuse when they are called upon. And do not be (too) weary to write it, whether it is small or large, for its (specified) term. That is more just in the sight of Allah and stronger as evidence and more likely to prevent doubt between you, except when it is an immediate transaction which you conduct among yourselves. For (then) there is no blame upon you if you do not write it. And take witnesses when you conclude a contract. Let no scribe be harmed or any witness. For if you do so, indeed, it is (grave) disobedience in you. And fear Allah. And Allah teaches you. And Allah is Knowing of all things. And if you are on a journey and cannot find a scribe, then a security deposit (should be) taken. And if one of you entrusts another, then let him who is entrusted discharge his trust (faithfully) and let him fear Allah, his Lord. And do not conceal testimony, for whoever conceals it - his heart is indeed sinful, and Allah is Knowing of what you do".

In this verse, Allah Swt. recommends to humans that an contract should be made in writing, attended by witnesses, and given the responsibility of the individual who carries out the contract and who is a witness. In addition, it is also recommended that if an contract is not executed in cash, an object can be held as collateral. The existence of writings, witnesses, or collateral objects is evidence of the occurrence of the contract.

Eighth, the principle of the promise is binding. In normative law, this is known as the “*pacta sunt servanda*” principle, which means that the promise is binding,²² which refers to a contract formed lawfully by the parties that is binding on such parties fully according to the content of the contract. Article 1338 Paragraph (1) of the Code Civil states that, “*Agreement made legally, it applies as law*”. One the agreement is irrevocable until both parties agree otherwise or the reasons specified in the legislation are sufficient. This contract is based on the principle of strength. It is critical in contract law that people keep their agreements. To put it another way, the principle.²³

The principles of contract law in the civil law which are general principles that must be heeded by each party involved in an agreement are the principle of freedom, the principle of consensuality, the principle of binding the agreement (*pacta sunt servanda*), the principle of good faith and The principle of force majeure (the principle of Overmacht / the principle of coercion).²⁴

The Map of Islamic Contract Law in Indonesia

In the legal chart in Indonesia, the law is divided into two categories, namely: (1) Public law; and (2) Private law, this law is related to three things, namely: (a) International law; (b) Formal law; and (c) Material law, consist of commercial law and civil law.²⁵

There are those who do not distinguish between commercial law and civil law because the two laws are interrelated. After looking at the division or legal chart above, it can be seen that the legal position of the agreement is as part of property law which is included in civil law in Indonesia.²⁶

²²Rachman, “Dasar Hukum Kontrak (Akad) Dan Implementasinya Pada Perbankan Syariah Di Indonesia,” 56.

²³May Shinta Retnowati and Namira Muthia Rosalina, “Actualization of Mui Fatwa on Positive Law as Islamic Legal Opinion in Indonesia,” *Indonesian Journal of Law and Islamic Law (IJLIL)* 4, no. 2 (2022): 56, <https://ijlil.iain-jember.ac.id/index.php/ijl/article/view/233>.

²⁴Retnowati, “Konsep Essensialia Pada Prinsip Pembuatan Kontrak Dalam Perikatan,” 70.

²⁵Abdulkadir Muhammad, *Hukum Perdata Indonesia* (Bandung: Citra Aditya Bakti, 2010), 23.

²⁶Sri Lestari Poernomo, “Standar Kontrak Dalam Perspektif Hukum Perlindungan

Covenant law is part of the law of contract, where the law of the agreement is further divided into two, namely the law of written agreements and the law of unwritten agreements. And contract law is a form of written contract law. So, in fact the study that we speak of is only a small part of the existing law in Indonesia.²⁷

The law of wealth in Islamic law is included in the law of *muamalah*. Islamic wealth law is not the same as Dutch wealth law. This is because the law of persons and non-persons is included in the law of *muamalah*.

Philosophical Basis for the Enactment of Islamic Contract Law

According to Prof. Abdul Gani Abdullah, there are two major things underlying the enactment of Islamic contract law (*iltizam*). The first basis is *aqidah*, namely beliefs that force its implementation in transactions, and the second basis is sharia, as long as the norms or legal rules have two dimensions, namely the “*transcendental*” or vertical dimension and the horizontal dimension.²⁸ This transcendental dimension is known as “*hablum-minallah*” which is individual and collective accountability to God. While the other dimension is the horizontal dimension known as “*hablum-minannaas*” which regulates social interaction between humans. These two dimensions influence the behavior of Muslims in their daily transaction activities.²⁹

Mushthafa Ahmad Az-Zarqa, divides aspects of Islamic law into seven groups: (1) Law of worship, laws related to worship of Allah Swt., such as prayer, fasting, pilgrimage, clean from *hadas*, and so on; (2) Family law (*al-ahwal al-syakshiyah*), laws related to family life; (3) *Muamalah* law, laws that have a relationship with social life

Konsumen,” *Jurnal Penelitian Hukum De Jure* 19, no. 1 (2019): 112, <https://doi.org/10.30641/dejure.2019.V19.109-120>.

²⁷Azalia Septina Wardani, “Analisis Memorandum of Understanding Dalam Kontrak Kerjasama Ditinjau Dari Hukum Kontrak (Studi Memorandum of Understanding Antara Forisintinct Dan Partner)” (Universitas Muhammadiyah Surakarta, 2017), 40, <https://eprints.ums.ac.id/54896/>.

²⁸Umi Rohmah, “Perikatan (Iltizam) Dalam Hukum Barat Dan Islam,” *Al-'Adl* 7, no. 2 (2014): 146, <https://doi.org/10.31332/aladl.v7i2.225>.

²⁹Pangestika Rizki Utami, “Penerapan Prinsip Hukum Perjanjian Dalam Kontrak Kerjasama Pengelolaan Barang Milik Daerah,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 1 (2020): 20, <https://doi.org/10.24090/volksgeist.v3i1.3512>.

in society regarding objects and rights and the resolution of disputes; (4) Constitutional law and governance (*al-ahkam as-sulthaniyah* or *as-siyasah asy-syari'ah*), laws related to state life; (5) Criminal law (*al-jinayat*), laws related to crime, such as various types of criminal acts and criminal threats; (6) Law between countries (*as-siyar*), the laws governing the relationship between the Islamic state and other countries; and (7) Law of courtesy (*al-adab*), laws related to character, propriety, good values, and drinking with the right hand, reconcile those who are in conflict.^{30 31}

In Indonesia, contracts are included in positive law, which is regulated in the civil law section, while the philosophical basis for contracts in *muamalah* transactions according to sharia is that they can be included in vertical (*habluminallah*) and horizontal (*habluminannas*) relationships. As stated in Al-Qur'an surah Al-A'raf verse 172:

وَإِذْ أَخَذَ رَبُّكَ مِنْ بَنِي آدَمَ مِنْ ظُهُورِهِمْ ذُرِّيَّتَهُمْ وَأَشْهَدَهُمْ عَلَى أَنْفُسِهِمْ أَلَسْتُ بِرَبِّكُمْ قَالُوا بَلَى شَهِدْنَا أَنْ تَقُولُوا يَوْمَ الْقِيَمَةِ إِنَّا كُنَّا عَنْ هَذَا غْفِلِينَ

"And (mention) when your Lord took from the children of Adam (from their loins) their descendants and made them testify of themselves, (saying to them), "Am I not your Lord?" They said, "Yes, we have testified". (This) lest you should say on the day of Resurrection, "Indeed, we were of this unaware".

From the verse above, it is explained that there has been an agreement between God and humans who are about to be born on earth. As for the agreement made, it also contains several missions from Allah Swt. and His servants. While in the implementation of contracts carried out by humans, there are many kinds, such as those regulated in Article 1234 of the Civil Code, giving something (*hibah* contracts, *waqf* contracts, *infaq*, and alms), doing something (sale and purchase transactions, leasing, *wakalah*, and others), not doing something (limitations that should not be done by the parties or not

³⁰Mustafa Ahmad Az-Zarqa', *Madkhal Al-Fiqh Al-'Am* (Beirut: Dar Al-Fikr, 1968), 223.

³¹Dewi, *Hukum Perikatan Islam Indonesia*, 55.

bad activities).³²

The study of Islamic law will increasingly face challenges because the problems that arise are increasingly complex. The rapid development in the field of Islamic economics and also the development of technology today requires the availability of adequate laws governing various existing business transactions. Especially today business is not only done traditionally but also sophisticated and modern. This condition needs to be supported by adequate literature. The lack of Islamic legal literature related to transactions that continue to develop causes the slow pace of development of sharia business.

The existing classical literature only contains trade transactions that are still at a puritanical level. This shows that modern and contemporary studies need to be intensified to enrich scientific knowledge and adequate references in responding to global and sophisticated business problems and challenges as they are today and of course in the future. With the emergence of sharia economic and financial institutions such as BMT, Islamic banks, Islamic hotels, Islamic mutual funds, Islamic e-commerce, etc. Protection in the form of standard and clear legal regulations to ensure human security when conducting transactions. In this case, Islamic law should be able to answer the challenges of existing technological and economic developments. So that Islamic laws can be recognized for their existence and can not only be applied to Muslims but also to mankind in general.

Here then comes its own polemic because of the gap between positive law and Islamic law. The point is that Islamic law is a law that is purely based on a particular religious teaching while the positive law that has existed in Indonesia is a western product that has nothing to do with a particular religion. So came the suspicions that ultimately hampered the pace of development of Islamic law and the development of Islamic economics in general. Then how these obstacles should be overcome as soon as possible to open the clogged faucet so far by

³²Syaifuddin Muhammad, *Hukum Kontrak: Memahami Kontrak Dalam Perspektif Filsafat, Teori, Dogmatik, Dan Praktik Hukum (Seri Pengayaan Hukum Perikatan)* (Bandung: Mandar Maju, 2012), 64.

producing a legal product that is friendly to all religions.

For example, the use of transaction terms used in Islamic banking laws can be refined by using general terms. In addition, with the development of sharia transactions in the international sphere, the formulation of regulations regarding Islamic contract law in the principle of international law is very important. Moreover, considering the development of technology used by electronic transactions that are very rapidly demanding legal certainty that ensures security for the perpetrators.

In the Article of the 1945 Constitution and the first precepts of Pancasila as the implementation of worship in a broad sense for Muslims. In relation to the basic framework of Islam, in an Islamic society three categories of laws apply, namely: (1) Sharia or *syara'* law, namely the laws of Al-Qur'an and Sunnah relating to the actions of legal subjects; (2) *Fiqh*, namely knowledge or understanding of *syara'* from detailed arguments; (3) *Siyasah syar'iyah/al-qawwanin*, namely laws and regulations made by authorized institutions in the country that are in line with Islamic law.

If examined again the philosophical basis that establishes the existence of Islamic contract law in Indonesia can be detailed as follows Islam, *aqidah*, sharia, worship, *muamalah*, sharia law, *fiqh*, 1945 Constitution Article 29, Civil Code Article 1338, and morals.

Thus, the ideal of implementation of *muamalah* on philosophy is contract socioeconomic justice and income/welfare fairness is regarded as an essential component of Islamic moral philosophy. We can see how strongly Islam emphasises socioeconomic justice enforcement. The claims of capitalists and socialists that only they uphold the values of justice are thus false. No, the capitalist concept of socioeconomic justice and income equality does not exist. It is founded on spiritual dedication and fraternity (*ukhuwah*) among fellow humans. The resolve to defend socioeconomic justice stems more from the presence of group pressure. Islamic economic philosophy in this regard can be summarized in two ways, *at-tauhid* and *al-'adalah*, and some members add to three, *maslahah*, where the source of law is Al-Qur'an and Sunnah.

Conclusion

Islamic contract law is a part of Islamic law in the field of not only *muamalah* transaction which regulates human behavior in carrying out economic relations. However, the concept of a contract can be applied from something that can result in a counterbalance of subject the contract. Islamic contract law is broader than the material contained in western civil contract law. This can be seen from the relationship between the law of contract itself and the Islamic law that surrounds it, which not only regulates the relationship between humans, but also the relationship between humans and Allah Swt. and with their natural environment. The goal of implementation of *muamalah* on philosophy is contract socioeconomic justice and income/welfare fairness is regarded as an essential component of Islamic moral philosophy. It is founded on spiritual dedication and fraternity (*ukhuwah*) among fellow humans. The resolve to defend socioeconomic justice stems more from the presence of group pressure. Islamic economic philosophy in this regard can be summarized in two ways, *at-tauhid* and *al-'adalah*, and some members add to three, *maslahah*, where the source of law is Al-Qur'an and Sunnah.

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The Analysis of the Development of Islamic Economic System in Europe with the Increasing Capacity of Muslims as a Minority

Mohammad Ghozali

University of Darussalam Gontor, Indonesia
Email: mohammadghozali@unida.gontor.ac.id

Mualimin Mochammad Sahid

Universiti Sains Islam Malaysia (USIM), Malaysia
Email: mualimin.sahid@usim.edu.my

Muchamad Zainur Rohman

(Corresponding Author)
University of Darussalam Gontor, Indonesia
Email: zainurrohman081@gmail.com

Abstract

Islam entered Europe for the first time in 711 M, brought by Tariq bin Ziyad via Spain. In Europe Muslims are still classified as a minority because the largest religion in Europe is Christianity. Able to overcome various existing economic problems, especially the problem of the economic crisis, Islamic economics is present as an alternative to a capitalist economy and socialism. Islam comes with comprehensive and universal teachings. This research aims to discuss in depth the development of the Islamic economic system in Europe, using historical approaches and documentary methods in data collection techniques, namely by analyzing articles that have relevance to the topic being discussed. The conclusion of this research is that in the European continent itself, the development of an economy based on sharia, one of which is a factor in the increasing Muslim population in Europe. The growth and development of the Islamic economy in Europe can also be seen by the birth of Islamic banking, namely 22 banks that have been operating and 6 of them are certified full sharia. Sukuk are also getting more interest and ordering from the public, implants in Europe are listed on the Luxembourg Stock Exchange. The development of Islamic insurance is also relatively fast because it has received a good response from the community. Other progress can be seen from the many scientific studies that discuss the Islamic economic system in several universities, such as at Harvard University.

Keywords: Europe; Islamic Economics; Capitalist Economics

Abstrak

Islam masuk ke Eropa pertama kali pada tahun 711 M, dibawa oleh Tariq bin Ziyad melalui Spanyol. Di Eropa umat Islam masih tergolong minoritas karena agama terbesar di Eropa adalah Kristen. Mampu mengatasi berbagai permasalahan ekonomi yang ada, terutama masalah krisis ekonomi, ekonomi Islam hadir sebagai alternatif dari ekonomi kapitalis dan sosialisme. Islam hadir dengan ajaran yang komprehensif dan universal. Penelitian ini bertujuan untuk membahas secara mendalam perkembangan sistem ekonomi Islam di Eropa, dengan menggunakan pendekatan sejarah dan metode dokumenter dalam teknik pengumpulan data, yaitu dengan menganalisis artikel yang memiliki relevansi dengan topik yang sedang dibahas. Kesimpulan dari penelitian ini adalah di benua Eropa sendiri, perkembangan ekonomi yang berbasis syariah salah satunya menjadi faktor meningkatnya populasi Muslim di Eropa. Pertumbuhan dan perkembangan ekonomi Islam di Eropa juga dapat dilihat dengan lahirnya perbankan syariah, yaitu 22 bank yang telah beroperasi dan 6 diantaranya bersertifikat full syariah. Sukuk juga semakin diminati dan diminati masyarakat, implan di Eropa tercatat di Luxembourg Stock Exchange. Berkembangnya asuransi syariah juga tergolong cepat karena telah mendapat respon yang baik dari masyarakat. Kemajuan lain terlihat dari banyaknya kajian ilmiah yang membahas sistem ekonomi Islam di beberapa universitas, seperti di Universitas Harvard.

Kata Kunci: Eropa; Ekonomi Islam; Ekonomi Kapitalis

Introduction

The latest data shows that there are about 1,8 billion Muslims scattered around the world, and more than half of these Muslims are in Asia Pacific, which is 20%, and the rest in Europe, America, and Australia. It is estimated that the Muslim population will continue to increase to reach 30% by 2030, this growth is more than 2 times the growth of non-Muslims as a whole, as the growth of Muslims themselves averages 1,5% per year while non-Muslim growth only reaches 0,7%, Bahrul Hayat even revealed that then, one in four residents will be Muslim.¹

Following the historical approach, the largest religion in Europe is Christianity, followed by Islam, the presence of Islam itself is able to give a new nuance to civilization in Europe. Following history, Islam began to enter Europe in 711 M. Islam first introduced in Europe

¹Dedi Sahputra Napitupulu and Syawal Fahmi, "Pendidikan Islam Muslim Minoritas (Kasus Di Eropa Barat)," *Belajea: Jurnal Pendidikan Islam* 5, no. 1 (2020): 39, <https://doi.org/10.29240/belajea.v5i1.938>.

by Tariq bin Ziyad and Spain is the beginning of Islamic civilization in Europe. In a period of more than seven centuries the Muslims in Spain have reached a glorious era, including the formation of an economic system, intellectual progress, etc.²

Europe was once in a very difficult situation that is after the second world war, the second world war affected the economic and political situation of European countries can even be classified in chaos, then Islam came with new nuances and enter their milu and are easily accepted.³

Islam is a way of life, that is, the earth and all its contents are God's gift to human beings to be used in the best way for the common good.⁴ Islam is also a comprehensive and universal religion, which means that its teachings cover all aspects of life, both ritual (worship) and social (*muamalat*). In Islam there are also rules and guidelines that cannot be set aside,⁵ but are prescribed to ensure the safety of human beings be it religion, intellect, property, and lineage.⁶

Islamic economics is present in Europe as an alternative solution, the advantage of Islamic economics itself is that it is able to unite moral and spiritual values in the system, these moral values are not possessed by the economy with the western capitalist system economic actors who are destructive and detrimental to each other, one example of which is the rise of monopoly practices, usury and all forms of fraud that appear and are packaged so smoothly and neatly.⁷ The presence of the Islamic economic system becomes a way out for

²Sulasman and Suparman, *Sejarah Islam Di Asia Dan Eropa: Dari Masa Klasik Hingga Masa Modern* (Bandung: CV Pustaka Setia, 2013), 243.

³Napitupulu and Fahmi, "Pendidikan Islam Muslim Minoritas (Kasus Di Eropa Barat)," 39.

⁴Devid Frastiawan Amir Sup, "Tinjauan Masalah Terhadap Amdal," *Muslim Heritage* 4, no. 1 (2019): 45, <https://doi.org/10.21154/muslimheritage.v4i1.1724>.

⁵Muhammad Irkham Firdaus and Devid Frastiawan Amir Sup, "Legal Opinion Dalam Perspektif Hukum Islam," *El-Ghiroh: Jurnal Studi Keislaman* 21, no. 1 (2023): 63, <https://doi.org/10.37092/el-ghiroh.v21i1.360>.

⁶Muhammad Syafi'i Antonio, *Bank Syariah: Dari Teori Ke Praktik* (Depok: Gema Insani, 2001), 3-7.

⁷Djoko Setyo Hartono, "Ekonomi Islam Sebagai Solusi Alternatif Krisis Ekonomi Eropa," in *Seminar Nasional Ilmu Ekonomi Terapan Fakultas Ekonomi UNIMUS* (Semarang: Universitas Muhammadiyah Semarang, 2011), 118, <https://jurnal.unimus.ac.id/index.php/psn12012010/article/view/412>.

Muslims or non-Muslims to develop and explore the fulfillment of human needs through economic activities.

Methodology

The research method qualitative-descriptive,^{8 9} with this literature is through the use of historical approaches and documentary methods in data collection techniques,^{10 11} namely by analyzing articles that have relevance to the topic being discussed Islamic economic system development in Europe that on the European continent itself, sharia-based economic development is one of the factors in increasing the Muslim population in Europe, the growth and development of the Islamic economy in Europe can also be seen with the birth of Islamic banking.

Results and Discussion

Islamic Economics

Islamic economics can be interpreted as the study of human behavior in the use of limited resources for the production of goods and services to meet human needs.¹² Islamic economy according to Abdun Manan, *"Islamic economics is a social science which studies the economics problems of a people imbued with the values of Islam"*.¹³ Umar

⁸May Shinta Retnowati et al., "Perhitungan Zakat Penghasilan Di BAZNAS Ponorogo Dalam Perspektif Konsep Zakat Yusuf Qardhawi," *At-Tasyri': Jurnal Ilmiah Prodi Muamalah* 14, no. 2 (2022): 145, <https://doi.org/10.47498/tasyri.v14i2.1224>.

⁹Muhammad Irkham Firdaus et al., "Analisis Hukum Islam Terhadap Pemanfaatan Dana Hasil Denda Sanksi Kredit Macet (Studi Kasus Di PT Pegadaian Syariah Unit Madiun)," *At-Tasyri': Jurnal Ilmiah Prodi Muamalah* 14, no. 2 (2022): 133, <https://doi.org/10.47498/tasyri.v14i2.1218>.

¹⁰May Shinta Retnowati et al., "Penerapan Asas Kebebasan Berkontrak Dan Asas Keadilan Dalam Transaksi Bisnis," *Iqtishaduna* 4, no. 2 (2021): 671, <https://doi.org/10.53888/iqtishaduna.v4i2.481>.

¹¹Siti Aisyah et al., "Rethinking the Paradigm of Islamic Banking: Integrated of Commercial and Social Oriented," *Al-Iktisab: Journal of Islamic Economic Law* 6, no. 2 (2022): 147, <https://doi.org/10.21111/al-iktisab.v6i2.8844>.

¹²P3EI, *Ekonomi Islam* (Jakarta: PT Raja Grafindo Persada, 2011), 14.

¹³Muhammad Abdul Manan, *Islamic Economics: Theory and Practice* (India: Idarah Adabiyah, 1980), 3.

Chapra mentions that Islamic economy as the parent of Islamic finance is called monotheistic economy or divine economy, what is meant by monotheism here is that Islamic economy does not involve aspects of economic actors, but also values, rules, or systems that must be run out by economic actors. This is based on the belief that all economic factors belong to God and to Him all will be returned.¹⁴

Islamic economics is a discipline that studies human economic behavior based on monotheism contained in the pillars of faith and the pillars of Islam, all rules are Allah Swt. Sharia is not only for Muslims, this rule leads to the creation of peace, prosperity, eliminating tyranny, misery, and mutual harm to each other. Islamic economic principles are also abstracted to live without luxury, not to work on forbidden farms, stay away from *riba*. This is the fact of *aqidah* and *akhlaq* as well as Islamic sharia, because the value of *akhlaq* does not only depend on individual activities but also collective interaction.¹⁵

We can conclude that Islamic economics is closely related to Muslim behavior in society with a sharia framework. In Islamic economics thick with sharia values and monotheistic values, economics including social sciences are also inseparable from morality and ethics. Morality is an aspect normative that should also be included in the analysis of economic phenomena and in decision-making that is framed in the sharia corridor. Islamic economics also does not simply discuss how *hablum minan nas* but also but *hablum minallah*.

History of the Application of Islamic Economics

The beginning of the milestone of the birth of Islamic economics is marked by the beginning of the descent of the Prophet Muhammad Saw. into the world of trade, namely when the Prophet Muhammad Saw. was 12 years old and started his business at the age of 17 years old, until he received revelation at the age of 40 years old.¹⁶ And one of

¹⁴Aisyah Ayu Musyafah, "Perkembangan Perekonomian Islam Di Beberapa Negara Di Dunia," *Diponegoro Private Law Review* 4, no. 1 (2019): 419, <https://ejournal2.undip.ac.id/index.php/dplr/article/view/5103>.

¹⁵Fauzan, "Mewujudkan Ekonomi Islam Dengan Ruh Al-'Adl (Studi Pada YaPEIM Malaysia)," *An-Nisbah: Jurnal Ekonomi Syariah* 2, no. 1 (2015): 408, <https://doi.org/10.21274/an.2015.2.1.405-424>.

¹⁶Muhammad Syafi'i Antonio, *Muhammad Saw.: The Super Leader Manager* (Jakarta:

the forms of Prophet Muhammad Saw. business was to work hand in hand with the richest woman at that time, Siti Khadijah, who was also the wife of the Prophet Muhammad Saw. And when in conjunction with Siti Khadijah she was known as an honest and trustworthy person, this later became one of the sources of Siti Khadijah's interest in the Prophet Muhammad Saw.

The Islamic economic system has basically been introduced since the time of the Prophet Muhammad Saw. and his companions, with the prohibition of transactions with the imposition of *riba*, *maisir*, *gharar*, *dzalim*, and *haram* as the basic conditions of the implementation of Islamic economics.¹⁷ And in his business practice the Prophet Muhammad Saw. prohibiting transactions that contain elements of falsehood from both the seller and the buyer. The sale of goods must be by agreement of both parties, in the transaction must avoid excessive swearing, do not weigh and reduce the scales. The success of the Prophet in business is also never free from independence and the spirit of entrepreneurship, honest, trustworthy, intelligent, have skills, and able to communicate and build networks and partnerships, the last is to work hard and do not forget to worship Allah Swt.¹⁸

We can also evaluate Islamic economics from the Prophet's journey that it is human behavior and its relationship with other economic actors or with economic factors such as production, distribution, and consumption country. The next goal is to free the Muslims from the shackles of the west with their capitalist system and from the east which adheres to the communist economic system. The other goal is to revive Islamic values in all economic activities and save the morals of the people from materialism-hedonism. The next goal is to create economic buildings that embody the unity and solidarity of Islamic countries in an Islamic bond. And the ultimate goal of the implementation of Islamic economics, the system is to create the general welfare, and this welfare can be realized with the

ProLM Center dan Tazkia Publishing, 2010), 12.

¹⁷Musyafah, "Perkembangan Perekonomian Islam Di Beberapa Negara Di Dunia," 420.

¹⁸Mokh. Syaifu Bakhri, *Sukses Berbisnis Ala Rasulullah Saw.* (Jakarta: Erlangga, 2012), 45.

principle of justice.¹⁹

The economic characteristics of Islam are an inseparable part of the whole and comprehensive concept of Islam. Activity in Islamic economics is a form of worship, therefore it is said that economic activity in Islam does not only show the behavior of producers consumers etc., but also about *halal-haram*.²⁰ Islamic economics has oversight that comes from faith and responsibility to Allah Swt. Islamic economics is a system that harmonizes the well-being of the individual and the general, as well as balances the spiritual and the material. States are empowered to participate in the economy. Equitable distribution of income between the rich and the poor.²¹

The Failure of the Capitalist Economy

There are many economic systems that are developing in the world today, but in general, economic systems can be grouped into two, capitalism and socialism. As for other systems, such as social democracy, state capitalism, market socialism, benevolent states, are in the same framework as capitalism and socialism. The capitalist economic system that is currently developing is not the same as the beginning of the system's birth, there are many changes in the process of its journey to a more humanistic and ethical direction.²² Capitalist economics itself came in and became known to the West in the 16th century, brought about by Adam Smith with classical theory. The way the capitalist economic system works is based on three main pillars, namely individual freedom, the free market, and minimizing the role of the state. The capitalist economic system dominates the entire economic system practiced by the countries of the world that is production and trade activities that tend to individual or personal. Capitalists use several things to make a profit such as extending working hours, reducing wages, and leaving productivity. Of all the pillars, the easiest way to do this is to increase

¹⁹Rozalinda, *Ekonomi Islam: Teori Dan Aplikasinya* (Jakarta: Rajawali Pers, 2014), 3.

²⁰Abdul Fatah Abu Ghadah, *Kitabul Al-Kasb Lil Imam Muhammad Hasan Bin Al-Syaibani* (Beirut: Darul Al-Basyair Al-Islamiyah, 1997), 70.

²¹Mardani, *Hukum Ekonomi Syariah Di Indonesia* (Bandung: Refika Aditama, 2011), 12-13.

²²Nur Kholis, "Masa Depan Ekonomi Islam Dalam Arus Trend Ekonomi Era Global," *Unisia* 31, no. 68 (2008): 4, <https://doi.org/10.20885/unisia.vol31.iss68.art5>.

productivity through this mechanism because the number of production equipment is more than the number of employees.²³

The economic system in some countries is currently dominated by the capitalist economic system. The capitalist economic system prioritizes private and private ownership of the means of production, distribution activities, and exchange. In a capitalist system an activity of production or trade tends to be individualistic or private, this is done to achieve profit in highly competitive conditions and situations. It is also explained that the pillar of the capitalist economy is private property, the invisible hand, economic individualism, free market competition.²⁴

Among the weaknesses of the capitalist economy is the emergence of unfair competition. Its orientation is money which then makes business companies synonymous with materialistic views, the main goal of business is profit. Capitalism is also believed to be the cause of injustice in wealth distribution, power is controlled only by a few people, some economists believe that capitalism triggers the depletion of natural resources by massive exploitation to maintain sustainable economic growth. Labor is also compensated with the sole purpose of having higher productivity.²⁵

The capitalist economic system in its journey is seen as failing in realizing prosperity and well-being as stated by Adam Smith. The failure of the capitalist economic system is proven when the economic crisis hit European countries including Greece which has debts up to 328 billion euros with a deficit of 10,5%, then Portugal with a debt ratio of GDP reached 93% equivalent to 195 billion euros, and also Spain which has a debt of 60,1% of the total debt of 638 billion euros, and its budget reached a deficit of -9,2% and economic growth of only 0,8%.²⁶

Islamic Economics as a Solution and Universal

In recent years the world has been shocked by various demonstrations taking place in European countries. What is more

²³Muhammad Tho'in, "Konsep Ekonomi Islam Jalan Tengah (Kapitalis-Sosialis)," *Jurnal Ilmiah Ekonomi Islam (JIEI)* 1, no. 3 (2015): 127, <https://doi.org/10.29040/jiei.v1i03.34>.

²⁴*Ibid.*, 120.

²⁵*Ibid.*

²⁶Hartono, "Ekonomi Islam Sebagai Solusi Alternatif Krisis Ekonomi Eropa," 117.

interesting is that this actually happened to countries implementing capitalist economic system. Workers or moral workers of capitalist leaders in the economic crisis that hit Europe especially them. Questioning the attitude of wealth seekers on Wall Street who are considered the root cause of all problems. From the crisis in America in 2008 until the crisis in Europe has given major shocks to the capitalist economic system.²⁷

Among the features of capitalism are accelerated expansion of wealth, and maximizing individual production and fulfillment, individual freedom for personal gain, individual initiative to realize efficiency in resource allocation, unrecognized role of government in equal allocation and distribution, self-serving-interests that are generally selfish indirectly serve the collective social interest. Of course, but do not pay attention to the realization of macroeconomic goals based on the worldview of religion, which demands restraint of self-interest.²⁸

Capitalist economic systems tend to ignore morals and ethics. They insist on moral freedom of behavior and prioritize personal interests. This is different from Islamic economics, which is to promote the common good, selflessness in the economic world. Islam emphasizes giving, not just enriching oneself. This trait is a reflection of the ethical nature of Islam that all property belongs only to Allah Swt. That is the fact that wants the wealth to be shared by all human beings.²⁹ Islamic economics with one of the main pillars is morality which then becomes a shield for every behavior of economic actors, so as to believe that everything that exists is accountable as a means for human beings to realize prosperity and well-being.³⁰

Islamic economics is a middle ground between by combining capitalist and socialist economics. Islamic economics tries to take the positive and dynamic sides of both, and tries to leave out the weak

²⁷Tho'in, "Konsep Ekonomi Islam Jalan Tengah (Kapitalis-Sosialis)," 126.

²⁸M. Umer Chapra, *Islam Dan Tantangan Ekonomi: Islamisasi Ekonomi Kontemporer* (Surabaya: Risalah Gusti, 1999), 18.

²⁹Boedi Abdullah, *Peradaban Pemikiran Ekonomi Islam* (Bandung: Pustaka Setia, 2010), 346.

³⁰P3EI, *Ekonomi Islam*, 76.

elements of both systems.³¹ In addition to combining capitalist and socialist economics, the Islamic economic system also integrates moral values and spiritual values. Moral values that do not exist in the economic activities of the western-style capitalist economic system. The essence of Islamic morality is monotheism or divinity.³²

In Europe the Islamic economy is present and foreign because Europe itself is a minority country, but lately the Islamic economy has become increasingly popular. The question arises whether the Islamic economy is a new system, certainly not because Islam is the most recent the religion of divinity and a religion that is guaranteed its perfection. Recorded in the history of Muslims has reached a golden age that no one can deny. At that time, so many contributions of Islamic scholars are still highly praised by all parties in various fields of knowledge to this day, and it is difficult to accept the logic that the progress of the *ummah* with so many roles of Islamic leaders in various fields not supported by progress in the field of economics first, it can encourage the belief that the Islamic economic system is nothing new.³³

One of the goals of Islamic economics is (*maqashid syariah*) to achieve *falah* both in this world and in the hereafter, through a good and honorable way of life (*hayyah thayyibah*). According to As-Syatibi, the main purpose of Islamic economics is to achieve prosperity, which lies in taking care of the five *maslahah*, namely religion, intellect, soul, lineage, and property.³⁴ Islamic economics is not only oriented towards the physical and material development of the individual, but more importantly is building a peaceful and prosperous life. All forms of *maslahah* in Islam should also be created in a way that is in accordance with Islamic law, so then a noble civilization was formed, that is a civilization that prioritizes character and morals.³⁵

³¹Tho'in, "Konsep Ekonomi Islam Jalan Tengah (Kapitalis-Sosialis)," 126.

³²P3EI, *Ekonomi Islam*, 90.

³³Kholis, "Masa Depan Ekonomi Islam Dalam Arus Trend Ekonomi Era Global,"

10.

³⁴Sup, "Tinjauan Maslahah Terhadap Amdal," 46.

³⁵P3EI, *Ekonomi Islam*, 54.

Islamic Economics and Its Role in European Economy

The Islamic economy in Europe grew and flourished not apart from the influence of Muslim immigrants who migrated to Europe and settled there. These Muslim immigrants slowly began to interact and spread Islamic values full of peace and justice in the economy. Facts with the continuous increase in the Muslim population in Europe affecting the development and impacting the Islamic economy in the countries of Europe.³⁶ The increase in Muslim population in Europe has become a new problem in Europe. Previously Muslims in Europe were just immigrants with changing characteristics of second and third generation Muslim immigrants where they are no longer part of the immigrants but have become part of the citizens.³⁷

The increase in the Muslim population in Europe occurs in countries such as the US, France, Britain, and Germany. Each of these countries experiencing a Muslim population growth of between 1-5 million people, but this is still far from the number of Muslims in Russia which is a populous country 1-5 million largest Muslims, in Europe with the number of Muslims reaching 30 million. Pew Research in its study explained that the Muslim population in Europe which includes 28 countries in the European Union is currently 19,5 million, which is 3,8% in 2010. Even in period of three decades this time, there was a very significant increase in the number of Muslims in Europe.³⁸ Apart from the growth of the Muslim population in Europe, another factor that influences the development of the Islamic economy is that with a population that currently reaches 25% of the world's population it affects the need for *halal* products, the development of *halal* products is present as a new industry.³⁹

In 1976 the first national conference on Islamic economics was

³⁶Riyazi Faruk, *Islamic Finance 2010* (London: IFSL Research, 2010), 14.

³⁷Mochamad Faisal Karim, "Proses Munculnya Euro-Islam Sebagai Transnational Norms Di Kalangan Muslim Eropa," *Jurnal Kajian Wilayah* 1, no. 1 (2010): 33, <https://doi.org/10.14203/jkw.v1i1.129>.

³⁸T. Savage, "Europe and Islam: Crescent Waxing, Cultures Clashing," *The Washington Quarterly* 27, no. 3 (2004): 25, <https://doi.org/10.1162/016366004323090241>.

³⁹Abdul Jalil, "Runtuhnya Sistem Kapitalis Menuju Sistem Ekonomi Islam Mendunia," in *Annual International Conference on Islamic Studies (AICIS) XII* (Surabaya: UIN Sunan Ampel Surabaya, 2012), 8, <http://digilib.uinsa.ac.id/8874/>.

held in Makkah *Al-Mukarromah*, and the first foundation to establish an Islamic economics research center was Islamic Leicester United Kingdom, then developed into the International Islamic Economics Research Center or The International Center for Islamic Economics Research in King Abdul Aziz University in 1977, then the British Islamic Foundation published the great works of Islamic economists, such as Nejatullah Siddiqi, Umar Chapra, etc. And at that time also held a conference, seminar workshop, on the topic.⁴⁰ In 1981 Leicester founded the International Association for Islamic Economics, United Kingdom which is responsible as an organization at international conferences on Islamic economics, and the last conference was held in 2013 in Turkey.⁴¹

In 1982, Dar Al-Mal Al-Islami (DMI) opened an office in London with UK permission to mobilize investment funds for Luxembourg investment companies and Luxembourg *takaful* companies. DMI itself was established in 1981 under the supervision of the Commonwealth of the Bahamas with headquarters in Geneva (Switzerland). In 1983 the United Kingdom *takaful* company was established as a subsidiary of DMI aimed at meeting the needs of Muslims residing in the UK, with the offer of Islamic investment opportunities provided by *Takaful SA* in Luxembourg. United Kingdom *takaful* operating in Brimingham also offers services Islamic finance is available in a broad spectrum by product providers in addition to the *takaful* service offerings conducted by *Takaful SA* in Luxembourg.⁴²

In the same year, Al-Baraka Bank for the first time operated in the UK on a seizure from the British Central Bank, or Bank of England (BOE). Al-Baraka Bank was recorded in 1982 by Al-Baraka Investment Company based in Jeddah Saudi Arabia. Al-Baraka Bank is the only bank to currently offer exclusively Islamic banking services in the UK under the Banking Act 1987. Al-Baraka Bank has also become a leading bank in home financing as it has provided long-term financing on the importance of sharia houses for customers

⁴⁰Ahmed Belouafi and Abdelkader Chachi, "Islamic Finance in the United Kingdom: Factors Behind Its Development and Growth," *Islamic Economic Studies* 22, no. 1 (2014): 48, <https://ssrn.com/abstract=3158570>.

⁴¹Ibid.

⁴²Ibid.

since 1988 onwards.⁴³

The role of the Islamic economic system in Europe is also reflected in the events of the economic crisis that hit the world a few years ago. Islamic banking is able to be the savior of the great crisis. This system is a major growth area for international financing. Many countries are now trying to become the global center of Islamic financial business, such as London, is further developed than New York, which later became the beacon of Islamic economics in Europe.⁴⁴

Apart from the banking world, the development of Islamic economic practices in the financial sector also looks quite encouraging, in the world itself there are approximately no less than 75 countries in the world that have adopted the Islamic economic and financial system, and including Europe in it. In Europe, it turns out the UK has become the center of Islamic financial development. The British government has given permission to 22 Islamic banks in their country to operate, and 6 out of 22 banks have received full sharia certificates and the rest are still at the point of Islamic window with the International Bank Al-Baraka as a basis in 1982-1993. Even long before Bank Muamalat appeared in Indonesia in 1990, the first *sukuk* in Europe was issued in 2002 by Luxembourg, and it was these *sukuk* that played an active role in the issuance of 16 other *sukuk* until 2014 in Luxembourg Stock Exchange, while in the UK the first *sukuk* was issued on 25 June 2014.⁴⁵

The growth of Islamic finance in Europe can also be seen from the rapidly growing number of Islamic financial institutions and their instruments in Europe, including Islamic banking with 6 banks in the UK namely Bank of London and the Middle East (BLME), Al-Rayyan Bank, Gatehouse Bank, Qatar Islamic Bank of the United Kingdom (QIB UK), European Islamic Investment Bank, and Abu Dhabi Islamic Bank of the United Kingdom. While the London *sukuk* market occupies a central position in international bonds. The UK

⁴³Ibid., 49.

⁴⁴Musyafah, "Perkembangan Perkenomian Islam Di Beberapa Negara Di Dunia," 422.

⁴⁵Dadang Irsyamuiddin and Mohammad Ghozali, "Realita Kekuatan Ekonomi Islam Versus Kapital Di Eropa Di Abad 21," *Ekonomi Islam* 10, no. 1 (2019): 5, <https://journal.uhamka.ac.id/index.php/jei/article/view/3457>.

is the first western country to issue Islamic bonds or *sukuk*, these *sukuk* are in high demand by the public, this is evidenced by the high demand and booking of *sukuk* while allocations are used for various investors such as national wealth development funds, central banks, and domestic financial institutions and international. In the *takaful* or sharia insurance sector, the UK became a pioneer in the development of sharia insurance, the development of sharia insurance showed the positive response of the European community to the sharia-based insurance system. Sharia insurance is easily accepted and becomes an alternative to the existing insurance system.⁴⁶

The development of Islamic economics in the blue continent is increasingly evident with the movement in the academic field. Some of the world's leading universities are actively developing academic studies on Islamic economics, one of which is Harvard University which is a university that is actively developing forums and Islamic economic studies. There are at least 6 universities in The UK developed Islamic economic studies, and some European countries, such as Volker Nienhaus, Islamic economic scientists not only among Muslims, but also non-Muslims.⁴⁷

For the development of the Islamic economy, Europe encourages its youth in terms of academics in education, especially at the university level, namely in several renowned universities such as Durham University, Bangor University, Markfield Institute of Higher Education (MIHE), Reading University, City University of London, Lancaster University, Salford University, and most recently the University of Glasgow is trying to penetrate the Islamic banking programs offered. Not only focused on these universities, the government also held various efforts such as seminars and public activities on Islamic banking. This of course makes the UK a paradise for economic students Islam in particular Islamic banking in Europe.⁴⁸

⁴⁶Belouafi and Chachi, "Islamic Finance in the United Kingdom: Factors Behind Its Development and Growth," 49.

⁴⁷Kholis, "Masa Depan Ekonomi Islam Dalam Arus Trend Ekonomi Era Global," 16.

⁴⁸Irsyauddin and Ghozali, "Realita Kekuatan Ekonomi Islam Versus Kapital Di Eropa Di Abad 21," 7.

In Europe, more and more financial institutions offer a wide range of Islamic financial products, such as Citigroup, Deutsche Bank, HSBC, Lloyds TSB, and UBS. However, the rapid development of Islamic finance is unmatched by the increase in eligible numbers and sufficient human resources. One of the world's largest management consulting firms, AT Kearney, reported that the limited quality of human resources in the Islamic-based sector would hamper the development of the Islamic banking industry, given the attractiveness and continued development of Islamic banking.⁴⁹

Conclusion

The Islamic economic system in Europe seems to be growing and evolving. One of the indicators of the development of the Islamic economic system is the increase in the Muslim population in European countries. Muslims who were formerly immigrants then moved to permanent residents then became part of the citizenship and continued to grow. Not only that, wrong a testament to the continuity of economic development with the Islamic system getting stronger with the birth of many Islamic banking and many conventional banks began to pay attention to Islamic windows. The first Islamic economy to enter and develop in Europe was in 1967 through the first international conference on Islamic economics in Makkah *Al-Mukarromah*. The first foundation to establish an Islamic economic research center was Leicester United Kingdom, or The International Center of Research Islamic Economics at King Abdul Aziz University in 1977. Then the British Islamic Foundation published the great works of Islamic economists, such as Nejatullah Siddiqi, Umar Chapra, etc. The growth of Islamic finance in Europe can also be seen from the rapidly growing number of Islamic financial institutions and their instruments in Europe. Including Islamic banking with a total of 22 banks already operating and 6 of them have obtained full sharia certification. The first sukuk in Europe was issued in 2002 on the Luxembourg Stock Exchange, demand for sukuk in the community was high and allocated to some forms of investment. While

⁴⁹Kholis, "Masa Depan Ekonomi Islam Dalam Arus Trend Ekonomi Era Global," 18.

the sharia insurance sector also showed a growing trend with positive response from the public to sharia insurance earlier.

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Discussion on Cash Waqf: Perpetuity, Legal Aspect, and Scheme of Investment Between Madzahib and Islamic Scholars

Ahmad Fanani

(Corresponding Author)

Universiti Brunei Darussalam, Brunei Darussalam

Email: 19h0576@ubd.edu.bn

Muhamad Abduh

Universiti Brunei Darussalam, Brunei Darussalam

Email: muhamad.abduh@ubd.edu.bn

Abstract

The discussion on waqf is very interesting, especially in cash waqf which has recently been widely used in Islamic business instruments even though some Islamic scholars had different positions about it. In-depth, the problem appeared because the madzahib prohibited the using of cash waqf in business and its make policy makers on waqf productive confused, therefore the discussion and solution of the madzahib and Islamic scholar's opinions are needed, as well as the scheme of waqf investment through traditionally and contemporarily methods are required. Objectively, the research will discuss the comparison of madzahib opinions on cash waqf perpetuity and legal aspect depend on Islamic jurisprudence and snapshot the scheme of waqf investment traditionally and contemporarily. The methodology in this research is qualitative methodology where is conducting the documentation method to compile the madzahib and Islamic scholar's opinion on cash waqf perpetuity and legal aspect, as well as the scheme of waqf investment through traditional and contemporary methods. Concluded, the perpetuity and legal aspect of cash waqf used in investment depend on Syafi'i, Hanbali, Maliki, and Hanafi is prohibited due to impermanent source to use in waqf investment, but in the same time they pursued a solution of this problem by remaining the primary function of money as a medium of value or a tool to obtain permanent assets, therefore, some scholars allowed in creating traditional and contemporary scheme of waqf investment by using the cash waqf in according to the opinions.

Keywords: Cash Waqf; Perpetuity; Legal Aspect; Scheme of Waqf Investment

Abstrak

Pembahasan tentang wakaf sangat menarik, terutama dalam wakaf tunai yang akhir-akhir ini banyak digunakan dalam instrumen bisnis Islam meskipun beberapa ulama Islam memiliki pendapat yang berbeda tentangnya. Secara mendalam, permasalahan muncul karena madzahib melarang penggunaan wakaf tunai dalam bisnis dan membuat penyusun kebijakan wakaf produktif menjadi bingung, sehingga diperlukan pembahasan dan solusi dari pendapat madzahib dan ulama, serta skema investasi wakaf melalui metode tradisional dan kontemporer. Secara obyektif, penelitian ini akan membahas tentang perbandingan pendapat madzahib tentang kekekalan wakaf uang dan aspek hukumnya berdasarkan pada fiqh Islam, serta memotret skema investasi wakaf secara tradisional dan kontemporer. Metodologi dalam penelitian ini adalah metodologi kualitatif dengan menggunakan metode dokumentasi untuk menghimpun pendapat para madzahib dan ulama Islam tentang kelangsungan dan aspek hukum wakaf uang, serta skema investasi wakaf melalui metode tradisional dan kontemporer. Dapat disimpulkan bahwa, keabadian dan aspek hukum dari wakaf tunai yang digunakan dalam investasi menurut Syafi'i, Hanbali, Maliki, dan Hanafi itu dilarang karena sumbernya tidak permanen untuk digunakan dalam investasi wakaf, tetapi pada saat yang sama mereka mengupayakan penyelesaian masalah ini dengan kembali kepada fungsi utama uang sebagai media nilai atau alat untuk mendapatkan aset permanen, oleh karena itu, penggunaan uang diperbolehkan dalam membuat skema investasi wakaf tradisional dan kontemporer sesuai dengan pendapat madzahib.

Kata Kunci: Wakaf Tunai; Kekekalan; Aspek Hukum; Skema Investasi Wakaf

Introduction

Cash waqf is a part of productive waqf that can be developed if managed well like an investment fund and cooperate with professional *nazhir*.¹ Otherwise, Obaidullah said cash waqf is endowed and the earnings generated out of the investment of the cash funds are used to fulfil the intended social needs.² As mentioned by Cizakca³ and Prasetya,⁴ the earliest of cash waqf may be traced

¹Anna Sardiana, "Cash Waqf Fundraising: The Glaring Gap in Marketing Communication Practice of BWI (Indonesian Waqf Board)," *Jurnal Ilmu Manajemen & Ekonomika* 11, no. 2 (2019): 66, <https://doi.org/10.35384/jime.v11i2.146>.

²Mohammed Obaidullah, *Awqaf Development and Management* (Jeddah: Islamic Research and Training Institute, 2016), 47.

³Murat Cizakca, "Awqaf in History and Its Implications for Modern Islamic Economies," *Islamic Economic Studies* 6, no. 1 (1998): 46, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3164811.

⁴Yusi Septa Prasetya and Miftahul Huda, "Relevansi Tatakelola Wakaf Turki

back to 8th century, when Imam Zufar⁵ was asked how such waqf should function, and had been approved the Ottoman courts as early as the 15th century and by the end of the 16th such the dominant form of waqf formation all over Anatolia and the Balkans, and this argument is bolstered by Imam Bukhari and Ibnu Syihaab Az-Zuhri⁶ that allowed Dinar and Dirham waqf by converting both Dinar and Dirham as business capital.⁷

Further, Az-Zuhri proclaimed a *fatwa* that encouraged people to utilize Dinar and Dirham for the establishment of preaching, social, and education provision of Muslims at that time.⁸ Therefore, cash waqf is an efficient instrument can be an alternative for poverty alleviation, solution in some waqf businesses establishment without attaining totally by the government, a sustainable source of fund in creating Islamic socio-economics, powerful pervasive voluntary activity by perpetuity characteristic,⁹ innovation to assist in the establishment of a Waqf Hospital (RSW), waqf Personal Protective Equipment (PPE), waqf masks, waqf polyclinic, waqf Isolation House (RIW) and vaccine funding, and helps micro business actors in funding and sustaining businesses for recovering of economic.¹⁰

¹¹ ¹² Furthermore, cash waqf provides more giving *maslahah* for

Terhadap Pengembangan Wakaf Produktif Di Indonesia,” *Justicia Islamica* 14, no. 2 (2017): 177, <https://doi.org/10.21154/justicia.v14i2.1231>.

⁵Muhammad Zahid Al-Kausary, *Lamhatu An-Nazr Fi Sirati Al-Imam Zufar* (Cairo: Al-Anwar, 1949), 3.

⁶Salahuddin Ali Abdul Mawjood, *The Biography of Imam Az-Zuhri* (New York: Darussalam, 2006), 86.

⁷Abu As-Sa’ud Muhammad bin Muhammad, *Risalah Fi Jawaz Waqf An-Nuqud* (Beirut: Daar Ibn Hazm, 1997), 13.

⁸Aam Slamet Rusydiana, “Analysis of Cash Waqf Development in Indonesia Using Interpretive Structural Modeling (ISM),” *Journal of Islamic Economics Lariba* 4, no. 1 (2018): 1, <https://doi.org/10.20885/jielariba.vol4.iss1.art1>.

⁹Khaled Nour Aldeen, Inayah Swasti Ratih, and Sri Herianingrum, “Contemporary Issues on Cash Waqf: A Thematic Literature Review,” *International Journal of Islamic Economics and Finance (IJIEF)* 3, no. 2 (2020): 122, <https://doi.org/10.18196/IJIEF.3236>.

¹⁰*Ibid.*

¹¹Nurjannah and M. Wahyuddin Abdullah, “Cash Waqf: Economic Solution During the Covid-19 Pandemic,” *Fitrah: Jurnal Kajian Ilmu-Ilmu Keislaman* 6, no. 2 (2020): 226, <https://doi.org/10.24952/fitrah.v6i2.3058>.

¹²Uswatun Hasanah, “Cash Waqf and People Economic Empowerment in Indonesia,” *Economics and Finance in Indonesia* 59, no. 2 (2011): 218, <https://ideas.repec>.

developing profitable and secure investment in Islamic financial institution and promoting entrepreneurship in the world with interest free loans that makes the poor self-reliant and dignified.^{13 14}

Unfortunately, the debate on perpetuity, the legal aspect and investment through cash waqf are still happened due to the traditional concept of waqf embedded in the mindset of people which is waqf from movable and immovable wealth, whereas cash waqf is none from both sides. Therefore, this research appears to involves the opinions of Islamic scholars in the basic component of cash waqf, there is perpetuity, legal aspect, and scheme of investment.

Methodology

The research method used is a qualitative-descriptive method with a library research approach.^{15 16} Library research is a method of finding references relevant to the problems encountered, describes theoretical analysis, scientific studies, references, and literature related to this research,¹⁷ where is conducting the documentation method.¹⁸ Qualitative research used to analysis utilized documentation methods, including written text, files, and images, to document

[org/a/lpe/efijnl/201110.html](https://ejournal.unida.gontor.ac.id/index.php/aliktisab/article/view/10154).

¹³Mahadi Ahmad, "Cash Waqf: Historical Evolution, Nature, and Role As an Alternative to Riba-Based Financing for the Grass Root," *Journal of Islamic Finance* 4, no. 1 (2015): 66, <https://doi.org/10.12816/0024801>.

¹⁴Gustani and Dwi Aditya Ernawan, "Cash Waqf As an Alternative Source of Islamic Microfinance Institution's Capital in Indonesia," *Journal of Islamic Economics Lariba* 2, no. 2 (2016): 18, <https://journal.uui.ac.id/JIELariba/article/view/9677>.

¹⁵Selamet Hartanto and Devid Frastiawan Amir Sup, "Konsep Wakaf Uang Dalam Perspektif Hukum Di Indonesia," *Juornal Indonesian Comparative of Syariah Law* 4, no. 1 (2021): 42, <https://doi.org/10.21111/jicl.v4i1.5778>.

¹⁶Selamet Hartanto, May Shinta Retnowati, and Devid Frastiawan Amir Sup, "Waqf in the Perspective of Waqf Rules in Indonesia," *Al-Iktisab: Journal of Islamic Economic Law* 5, no. 1 (2021): 40, <https://doi.org/10.21111/al-iktisab.v5i1.6203>.

¹⁷Siti Aisyah et al., "Rethinking the Paradigm of Islamic Banking: Integrated of Commercial and Social Oriented," *Al-Iktisab: Journal of Islamic Economic Law* 6, no. 2 (2022): 151, <https://doi.org/10.21111/al-iktisab.v6i2.8844>.

¹⁸Devid Frastiawan Amir Sup and Achmad Hasyim Masruri, "Praktik Kerjasama Usaha Dalam Perspektif Musyarakah," *Al Hikmah: Jurnal Studi Keislaman* 13, no. 1 (2023): 114, <https://doi.org/10.36835/hjsk.v13i01.4027>.

events and provide accounting,¹⁹ the method compiles opinions of Islamic scholars to discuss perpetuity, legal aspects of cash waqf, and investments schemes by using inductive methods for conclusions. The analysis process is carried out continuously from start to finish. The analysis process in question includes data interpretation, language translation, word editing, and compiling them in a logical systematic way, so that the resulting description can become a complete concept building that is easy to understand.²⁰

Results and Discussion

Cash Waqf According to the Islamic Scholars

Cash waqf is a term for money or currency, a medium of exchange, and store of value based on goods and services.²¹ Moreover, definition of cash waqf is unique charitable endowment using cash or trust funds for charitable purposes, supporting services in Allah's name,^{22 23 24} while Chowdhury defined cash waqf as a gifted capital was "transferred" to borrowers who after certain period returned to the waqf the principal plus a certain "extra" amount,²⁵ money spent

¹⁹Jashim Uddin Ahmed, "Documentary Research Method: New Dimensions," *Indus Journal of Management & Social Sciences* 4, no. 1 (2010): 4, https://econpapers.repec.org/article/ijhjournal/v_3a4_3ay_3a2010_3ai_3a1_3ap_3a1-14.htm.

²⁰Devid Frastiawan Amir Sup, "Relevansi Konsep Hutan Wakaf Dengan Konsep Wakaf Di Dalam Islam," *Islamic Economics Journal* 7, no. 1 (2021): 50, <https://doi.org/10.21111/iej.v7i1.6430>.

²¹Al-Ma'any, "Definition of Nuqud," Al-Ma'any, 2022, <https://www.almaany.com/ar/dict/ar-ar/النقود/>.

²²Cizakca, "Awqaf in History and Its Implications for Modern Islamic Economies," 49.

²³Murat Cizakca, *A History of Philanthropic Foundations: The Islamic World from the Seventh Century to the Present* (Istanbul: Economics Department Bogazici University Istanbul, 2000), 23.

²⁴Murat Cizakca, "Incorporated Cash Waqfs and Mudaraba, Islamic Non-Bank Financial Instruments from the Past to The Future," in *International Seminar on Non-Bank Financial Institutions* (Kuala Lumpur: Munich Personal RePEc Archive, 2004), 18, <https://mpra.ub.uni-muenchen.de/id/eprint/25336>.

²⁵Md. Shahedur Rahaman Chowdhury, Mohd. Fahmi bin Ghazali, and Mohd. Faisol Ibrahim, "Economics of Cash Waqf Management in Malaysia: A Proposed Cash Waqf Model for Practitioners and Future Researchers," *African Journal of Business Management* 5, no. 30 (2011): 12158, <https://doi.org/10.5897/AJBM11.1810>.

on pious and social purposes by founders, including individuals, companies, institutions, corporations, or organizations, is dedicated to society's welfare in perpetuity.²⁶ Further, cash waqf (*waqf al-nuqud*) is waqf that a person, group of persons or institution or legal entity in the form of cash, include money, gold and silver bullion, Dinar and Dirham, gold and silver jewelry,²⁷ operated by sharia financial institutions that can be used as an investment by *nadzir* in productive businesses and the benefits are provided to the people.²⁸

Cash waqf has various benefits like Kamal's explanation when cash waqf offers security funds from depreciation, immutability of principal value for money used as *mawquf* objects for *mawquf 'alaih* receivers, and productive investment for accurately, clearly, and targeted receivers.²⁹ Additionally, Pusparini and Awang argue that cash waqf offers four main benefits for community building, enabling minimal-fund individuals to participate without land ownership, investing idle land in infrastructure, supporting unstable Islamic educational institutions, and encouraging independence in education development without state budget dependence.³⁰

Concisely, cash waqf, also known as *waqf al-nuqud* or *dananir*, refers to cash from Islamic financial institutions, such as money, gold, silver bullion, Dinar, Dirham, and jewelry, used for investment in productive businesses and providing benefits to the people.

²⁶Magda Ismail Abdel Mohsin, "Financing Through Cash-Waqf: A Revitalization to Finance Different Needs," *International Journal of Islamic and Middle Eastern Finance and Management* 6, no. 4 (2013): 307, <https://doi.org/10.1108/IMEFM-08-2013-0094>.

²⁷Diana Farid, "The Waqaf of Money: An Islamic Financial Instrument for Empowering Economy Community," *International Journal of Nusantara Islam* 4, no. 2 (2016): 30, <https://doi.org/10.15575/ijni.v4i2.1068>.

²⁸Muhammad Tho'in and Iin Emy Prastiwi, "Wakaf Tunai Perspektif Syariah," *Jurnal Ilmiah Ekonomi Islam* 1, no. 2 (2015): 64, <https://doi.org/10.29040/jiei.v1i02.29>.

²⁹Mustafa Kamal, "Wakaf Tunai Menurut Pandangan Fiqh Syafi'iyah Dan Fatwa Majelis Ulama Indonesia No. 2 Tahun 2002 Tentang Wakaf Uang," *Jurnal Ilmiah Islam Futura* 15, no. 1 (2015): 96, <https://doi.org/10.22373/JIIF.V15I1.560>.

³⁰Martini Dwi Pusparini, "Konsep Wakaf Tunai Dalam Ekonomi Islam: Studi Pemikiran Abdul Mannan," *Falah: Jurnal Ekonomi Syariah* 1, no. 1 (2016): 17, <https://doi.org/10.22219/JES.V1I1.2692>.

The Perpetuity of Cash Waqf Between Islamic Scholars

Cash waqf is human-owned property in Islamic jurisprudence,³¹ and a *al-mal* refers to properties owned and controlled by someone, involving physical and beneficial aspects like gold, silver, animals, plants, and residence,³² and definition of property in various Islamic scholars opinions is many, such Ibn 'Abidin said a meaning of property is human tendencies, saved and used for financial support,³³ Syatiby said a property is everything has ownership status of someone and is not allowed by others to own it without the permission,³⁴ and Ibn Al-'Araby said a property is something makes humans persistent to get it and use it in their daily lives.³⁵ In term of property meaning, some of scholars before highlighted the ownership system in something could be saved and used in daily lives which humans persistent to get it.

Moreover, *fiqh* categorizes property into four classifications, *mutaqawwim* (valuable and non-valuable), *'iqar* (immovable and *manqul*), *mitsly* (fungible property) and *qimiy* (non-fungible property), and *istihlaky* (consumable and inconsumable property).³⁶ By those classification, appear controversial opinions about property in waqf, especially on cash waqf included immovable or movable property in *fiqh*. A gap could looked under figure below:

³¹Abu Al-Fatih Nasir Ad-Din Al-Mutorrijy, *Al-Mugrib Fi Tartib Al-Ma'rib* (Syria: Maktabah Usamah bin Zayd, 1979), 278.

³²Wahbah Az-Zuhaily, *Al-Fiqh Al-Islamy Wa Adillatuhu* (Damascus: Dar Al-Fikr, 1985), 40.

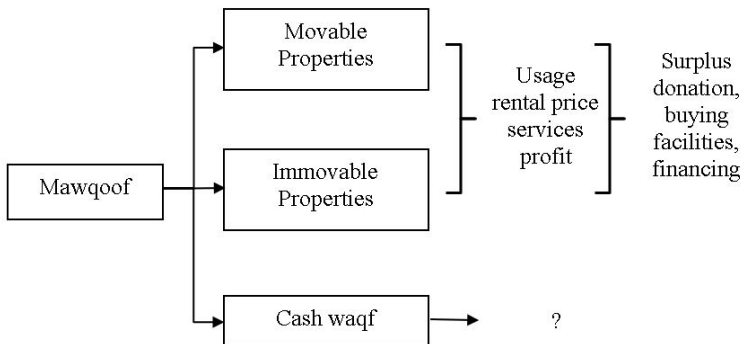
³³Ibn 'Abidin, *Raddu Al-Muhtar 'Ala Ad-Dur Al-Mukhtar* (Riyadh: Dar 'Alim Al-Kutub, 2003), 10.

³⁴The Ministry of Awqaf and Islamic Affairs, *Al-Mausu'ah Al-Fiqhiyyah Al-Kuwaytiyyah* (Kuwait: The Ministry of Awqaf and Islamic Affairs, 2006), 231.

³⁵Ibn Al-'Araby, *Ahkam Al-Quran* (Beirut: Dar Al-Kutub Al-'Ilmiyah, 2003), 107.

³⁶Az-Zuhaily, *Al-Fiqh Al-Islamy Wa Adillatuhu*, 43.

Figure 1. The Diagram of Immovable and Movable Properties



Source: Rahman and Awang (2018)³⁷

The figure shows that immovable and movable properties have perpetual benefits due to their corpus being maintained. Waqf generates perpetual benefits from permanent assets, such as the Masjid Al-Haram Hotel in Makkah. The longer the property can be preserved, more benefits can be generated, such as developing additional properties. Cash waqf remains controversial due to its non-permanent nature.³⁸

The statement above supported with Islamic scholars, including Syafi'i, Hanbali, Maliki, and Hanafi those believe waqf is only allowed on movable, eternal property.³⁹ For example, gold and silver jewelry can be inherited as waqf due to their enduring nature, allowing for eternal benefit, as seen in Hafsah's bequest to relatives.⁴⁰ In case Dinar and Dirham, raises debate among scholars because it from consumable property whereas benefit can be taken when used in a transaction,

³⁷Amilah Awang Abd Rahman and Abdul Bari Awang, "Exploring the Dynamism of the Waqf Institution in Islam: A Critical Analysis of Cash Waqf Implementation in Malaysia," *Intellectual Discourse* 26, no. Special Issue (Waqf) (2018): 1112, <https://journals.iium.edu.my/intdiscourse/index.php/id/article/view/1260>.

³⁸Ibid.

³⁹Farhana Mohamad Suhaimi, Asmak Abd. Rahman, and Sabitha Marican, "The Role of Share Waqf in the Socio-Economic Development of the Muslim Community: The Malaysian Experience," *Humanomics* 30, no. 3 (2014): 230, <https://doi.org/10.1108/H-12-2012-0025>.

⁴⁰Ibn Qudamah, *Al-Mughni* (Riyadh: Dar 'Alam Al-Kutub, 1992), 230.

thus, making it evident that the element of perpetuity is not inherently present in the cash per se.⁴¹ However, in practice, cash is a medium for storing value and can be used to obtain permanent assets like land and buildings, meeting waqf criteria. This opinion aligns with other *madzhab* schools standards, such as Syafi'i, Maliki, and Hanbali.⁴² Succinctly, Islamic scholars debate money's physicality and role in waqf, with some suggesting it's a medium for permanent assets.

The Legal Aspect of Cash Waqf Between Madzhab

Cash waqf has been carried out since the 2nd century after the *Hijrah*. As narrated by Imam Bukhari who said that Imam Zuhri is of the view that Dinars and Dirhams can be used as waqf assets as capital then the profits are distributed to those who are entitled (*mawquf 'alaih*) and it is recommended for the construction of social facilities, preaching, and education of Muslims,⁴³ even though some Islamic scholars had different opinion on cash waqf, especially on a legal of cash waqf like below.

Hanafiyah school from Abu Hanifah and Abu Yusuf also not permitted a cash waqf due to money is a type of movable property, but in contrary with Zufar⁴⁴ who allowed cash waqf like Dinar or Dirham in lending transaction of business with distributing a revenue for needy or in the way of Allah, it is same with Muhammad opinion who allowed cash waqf with condition, i.e. economy process or transaction in cash waqf.^{45 46 47} Meanwhile, the *mutaqaddimin* (classical) *ulama* from the Hanafis, allow Dinar and Dirham waqf as cash waqf. It is based on *al-istihsan bi al-'urf* in the *asar* of Abdullah bin Mas'ud ra., "*What is considered good by the Muslims is also considered good by*

⁴¹Suhaimi, Rahman, and Marican, "The Role of Share Waqf in the Socio-Economic Development of the Muslim Community: The Malaysian Experience," 231.

⁴²Ibn 'Abidin, *Raddu Al-Muhtar 'Ala Ad-Dur Al-Mukhtar*, 555.

⁴³Al-Bukhary, *Sahih Al-Bukhary* (n.p.: Dar Tuq An-Najat, 2001), 12.

⁴⁴Zaynuddin Ibn Nujaym, *Al-Bahru Ar-Raiq Syarhu Kanzu Ad-Daqaiq* (Beirut: Dar Al-Kutub Al-'Ilmiyyah, 1997), 219.

⁴⁵Ibn Al-Maudud Al-Mausuly, *Al-Ikhtiyar Li-Ta'li' Al-Mukhtar* (Cairo: Matba'ah Al-Halby, 1937), 42.

⁴⁶Ibrahim bin Muhammad bin Ibrahim Al-Halby, *Majma' Al-Anhur Fi Syarhi Multaqa Al-Abhur* (Beirut: Dar Al-Kutub Al-'Ilmiyyah, 1998), 747.

⁴⁷Ibn 'Abidin, *Raddu Al-Muhtar 'Ala Ad-Dur Al-Mukhtar*, 374.

God, and what is considered bad by Muslims is also bad in the eyes of Allah".⁴⁸ In the 8th century, Imam Zufar had approved cash waqf in the Islamic world for the first time. According to him, cash waqf would be invested through *mudarabah* and profits would be spent for charity. Nevertheless, cash waqf did not expand and mature until the 16th century and after that century it became popular, especially among the Ottomans.⁴⁹

Scholars from Hanbali, Syafi'i, Ibn Syas,⁵⁰ Ibn Al-Hajib, from Maliki school,⁵¹ prohibited a practice of cash waqf due to money is consumable property and it benefit appear properly with breaking a commodity like using a money in various business, and this condition is an opposite with waqf. Nevertheless, Sahib Al-Furu' known with Ibn Muflih,⁵² allowed cash waqf which was prohibited by Syafi'i scholars.^{53 54 55 56} Maliki school in generally didn't allow cash waqf in practice except used in lending transactions, but the opinion in *al-mudawwanah* book from Imam Malik by sentence "*fatuqrad liman yantafi'u bi-infaqih, wa yaruddu badalaha*" or cash waqf is possible to use in lending transaction with a commitment of lender to return back after using a property, thus, the cash or property still existed though used in business transactions,⁵⁷ same as Ibn Muhammad Al-Maliky in book of *zakat* and waqf.⁵⁸ Further, Maliki scholars decided a legal

⁴⁸Ahmad Ibn Hanbal, *Musnad Imam Ahmad Ibn Hanbal* (Beirut: Muassasah Ar-Risalah, 1999), 84.

⁴⁹Chowdhury, Ghazali, and Ibrahim, "Economics of Cash Waqf Management in Malaysia: A Proposed Cash Waqf Model for Practitioners and Future Researchers," 12159.

⁵⁰Khoruddin Az-Zirikly, *Al-A'lam* (Beirut: Dar Al-'Ilmi li Al-Malayin, 2002), 269.

⁵¹Umar Rida Kahalah, *Mu'jam Al-Muallifin* (Beirut: Muassasah Ar-Risalah, 1957), 265.

⁵²Ibid., 44.

⁵³As-Syarbiny, *Mugny Al-Muhtaj* (Beirut: Dar Al-Ma'rifah, 1997), 377.

⁵⁴Ibn Syihabuddin bin Ar-Ramly, *Nihayah Al-Muhtaj* (Beirut: Dar Al-Kutub Al-'Ilmiyyah, 2003), 358.

⁵⁵An-Nawawy, *Raudah At-Talibin* (Beirut: Dar 'Alam Al-Kutub, 2003), 315.

⁵⁶Al-Ansary, *Asna Al-Matalib Syarhu Raud At-Talib* (n.p.: Al-Matba'ah Al-Maymaniyyah, 713), 458.

⁵⁷Ad-Dasuqy, *Hasyiyah Ad-Dasuqy* (Cairo: Dar Ihya Al-Kutub Al-'Arabiyyah, n.d.), 583.

⁵⁸Ibn Muhammad Al-Maliky, *Syarhu Miyarah Al-Fasy* (Beirut: Dar Al-Kutub Al-'Ilmiyyah, 2000), 229.

of cash waqf as a *makruh*,⁵⁹ or discouraged action in generally.⁶⁰

In according to Ibn 'Abidin, cash waqf is forbidden due to cash waqf is a tradition came from Rome society and an opposite with another countries,⁶¹ the essence of money is like food which is things from consumable property and Ibn Ruslan said cash waqf unallowed excluded real estate and movable property,⁶² even though some scholar of Syafi'i allowed cash waqf like Abu Saur,⁶³ in Mawardi's book.⁶⁴ Additional, some of Syafi'i scholars allowed cash waqf depend on Nafi' narration, "*Hafsa bought jewelry for twenty thousand, so she endowed it for the women of the Al-Khattab family, and she did not pay its zakat*", because this is an asset can be used with eternal goods such as real estate so it is permissible to endow it and take the proceeds.⁶⁵ Moreover, Faiq said that cash waqf used in loan transactions is allowed and has the advantage to produce great benefits for the needy and no problems in this regard or the arguments that prohibit it and have good intentions to help others.^{66 67}

A recent *fatwa* issued by the International Council of Fiqh Academy (ICFA) of the Organization of the Islamic Conference, holding its 15th session in Muscat, Sultanate of Oman, on 14–19 Muharram 1425 H (6–11 March 2004), clearly states: (1) Creating cash waqf is permissible since it satisfies the shariah objective of waqf that is retaining the principal and offering its benefits and because units of money have no specific merits that prevent units from standing

⁵⁹Oxford, "Makruh," Oxford University Press, 2022, <https://www.oxfordreference.com/view/10.1093/oi/authority.20110810105327428>.

⁶⁰Ibn 'Abdurrahman At-Tarablisy, *Mawahib Al-Jalil Li-Syarhi Mukhtasar Al-Khalil* (Cairo: Dar 'Alam Al-Kutub, 2003), 631.

⁶¹Abu Zakariya Muhyiddin bin Syaraf An-Nawawy, *Al-Majmu' Sharh Al-Muhaddzab* (Jeddah: Maktabah Al-Irsyad, n.d.), 325.

⁶²Ibn Ruslan, *Syarhu Kitab Gayah Al-Bayan* (Beirut: Dar Al-Ma'rifah, n.d.), 457.

⁶³Az-Zirikly, *Al-A'lam*, 30.

⁶⁴Abu Al-Hasan 'Aly bin Muhammad bin Habib Al-Mawardy, *Al-Hawy Al-Kabir* (Beirut: Dar Al-Kutub Al-'Ilmiyyah, 1994), 1299.

⁶⁵An-Nawawy, *Al-Majmu' Sharh Al-Muhaddzab*, 325.

⁶⁶Alauddin Abu Al-Hasan 'Aly bin Sulayman Al-Mardawy, *Al-Insaf Fi Ma'rifah Ar-Rajih Min Al-Khilaf 'ala Mazhab Al-Imam Ahmad Bin Hanbal* (Beirut: Dar Ihya At-Turas Al-'Araby, 1998), 11.

⁶⁷Muhammad bin Salih bin Muhammad Al-'Usaymin, *As-Syarhu Al-Mumti' 'ala Zad Al-Mustaqni'* (n.p.: Dar Ibn Al-Juzy, 2007), 18.

for and replacing each other; (2) Money can be made principal of waqf for extending goodly loans or for investment, either directly or through the participation of several waqf founders in one fund. Money can also be mobilized for waqf purposes through the issuance of waqf shares to donors to encourage giving waqf and to promote collective participation in it; (3) When a money waqf is invested in purchasing physical properties (as when the waqf manager uses it for purchasing a real estate or contracting a manufactured asset), the purchased property does not itself become waqf in replacement of the money. Therefore, the properties purchased in this manner can be resold to continue the investment process.⁶⁸

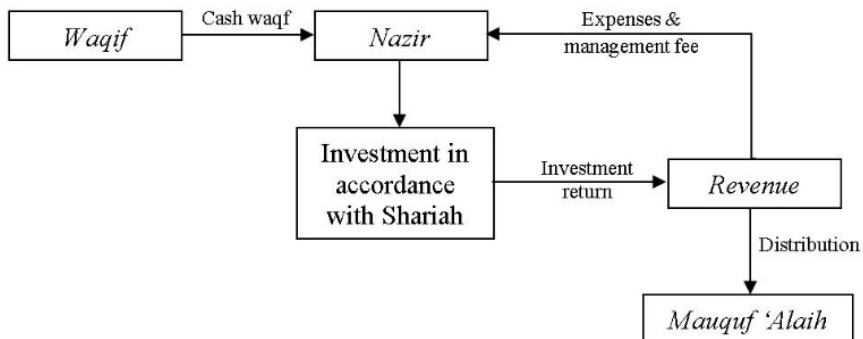
Concisely, the Hanafiyah school has varying opinions on the legality of cash waqf usage. Abu Hanifah and Abu Yusuf prohibited cash waqf due to money being a movable property. Zufar, Muhammad, and *mutaqaddimin ulama* from Hanafi allow Dinar and Dirham as cash waqf, relying on *al-istihsan bi al-'urf*. Scholars from Hanbali, Syafi'i, Ibn Syas, Ibn Al-Hajib Al-Maliky, Ibn Muflih As-Syafi'iy, Maliki school, and Ibn Muhammad Al-Maliky differ in their opinions. Discussions have spread among Syafi'iyyah scholars, with some allowing it while others, like Ibn Ruslan, Abu Saur, and some Syafi'i scholars, based on Nafi' narration, prohibit cash waqf practice.

The Scheme of Cash Waqf Investment

The investment using cash waqf has various types and different models, but a basic model of cash waqf investment as below and developed day by day:

⁶⁸The Council of the International Islamic Fiqh Academy of the Organization of the Islamic Conference, "Resolution No. 140 (6/15) Investment of Waqf, Its Yields, and Incomes," International Islamic Fiqh Academy, 2004, <https://iifa-aifi.org/en/32887.html>.

Figure 2. Cash Waqf Management and Investment Scheme



Source: Islamic Markets (2020)⁶⁹

Cash Waqf Investment Through Mudarabah Based Financing

Imam Zufar approved cash waqfs, envisioned investing corpus through *mudarabah* and distributing returns to poor as charity.⁷⁰

⁷¹ *Mudarabah* is a partnership where one partner executes a viable business, while the other invests or finances it.⁷² This arrangement can be concluded between investment account holders and Islamic banks, with the Islamic bank sharing profits based on pre-agreed ratios. Losses are borne by the fund's provider, except for verified misconduct or violation of conditions.⁷³ Further, the cash waqf used for *mudarabah* based financing as below:

⁶⁹Shamsiah Abdul Karim, "Cash Waqf in Indonesia," Islamic Markets, 2020, <https://islamicmarkets.com/education/cash-waqf-in-indonesia>.

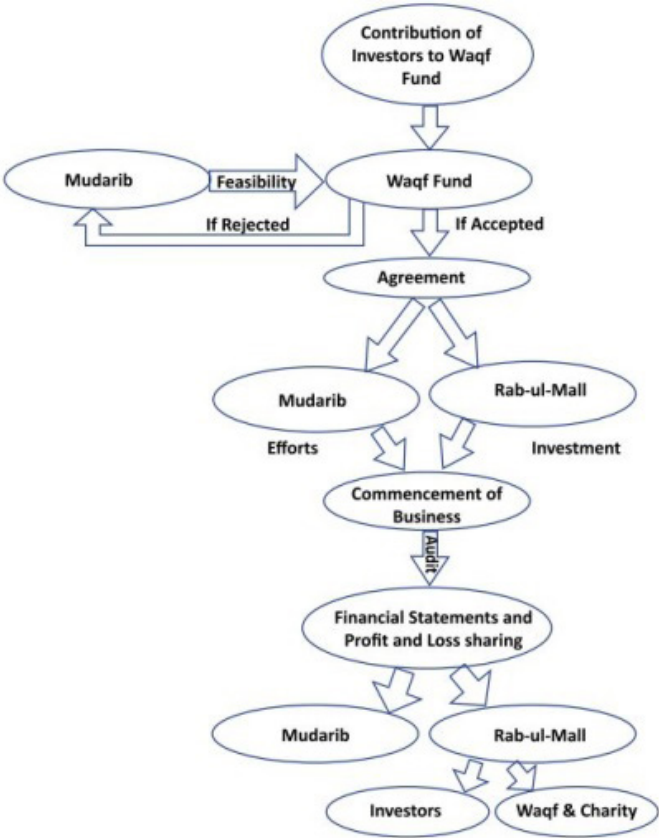
⁷⁰Cizakca, "Incorporated Cash Waqfs and Mudaraba, Islamic Non-Bank Financial Instruments from the Past to The Future," 21.

⁷¹Chowdhury, Ghazali, and Ibrahim, "Economics of Cash Waqf Management in Malaysia: A Proposed Cash Waqf Model for Practitioners and Future Researchers," 12160.

⁷²Abdullah, "Waqf: A Proposed Model for Islamic Finance," *Market Forces Research Journal* 9, no. 1 (2014): 18, <https://kiet.edu.pk/marketforces/index.php/marketforces/article/view/257>.

⁷³Md. Habibur Rahman, "Mudarabah and Its Applications in Islamic Finance: An Analysis," *Asian Research Consortium* 8, no. 6 (2018): 36, <https://doi.org/10.5958/2249-7323.2018.00042.1>.

Figure 3. *Mudarabah* Based Financing



Source: Abdullah (2014)⁷⁴

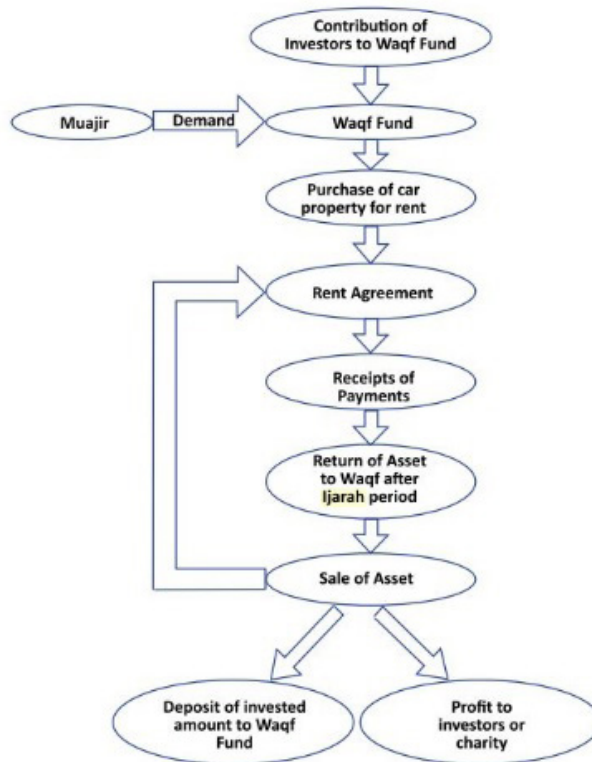
Cash Waqf Investment Through Ijarah Based Financing

Ijarah in Islamic jurisprudence involves renting out an asset, with two types, hiring employee services and transferring property usufruct for rent claim.⁷⁵ The cash waqf based *ijarah* based financing could be seen in figure below:

⁷⁴Abdullah, "Waqf: A Proposed Model for Islamic Finance," 18.

⁷⁵Ibid., 19.

Figure 4. *Ijarah* Based Financing



Source: Abdullah (2014)⁷⁶

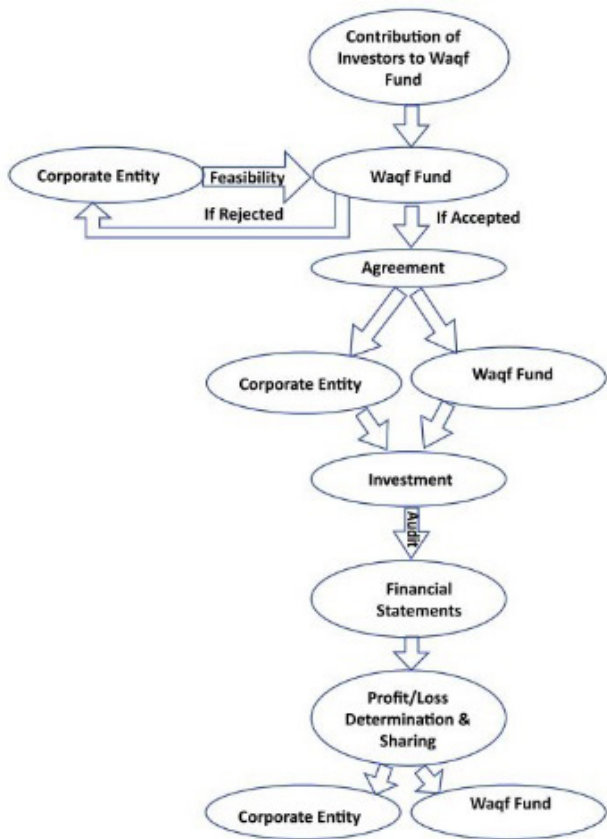
Cash Waqf Investment Through Musyarakah Based Financing

Islamic banks use a financing technique where capital providers share funds with business enterprises, with all partners participating in management. Profits are distributed in pre-agreed ratios, while losses are borne by each partner proportional to capital contributions.⁷⁷ While cash waqf investment through *musyarakah* financing as figure below:

⁷⁶Ibid.

⁷⁷Muhammad Akram Khan, *Islamic Economics and Finance: A Glossary*, 2nd ed. (London: Routledge, 1990), 136.

Figure 5. Musyarakah Based Financing



Source: Abdullah (2014)⁷⁸

Cash Waqf Investment Through Murabahah Based Financing

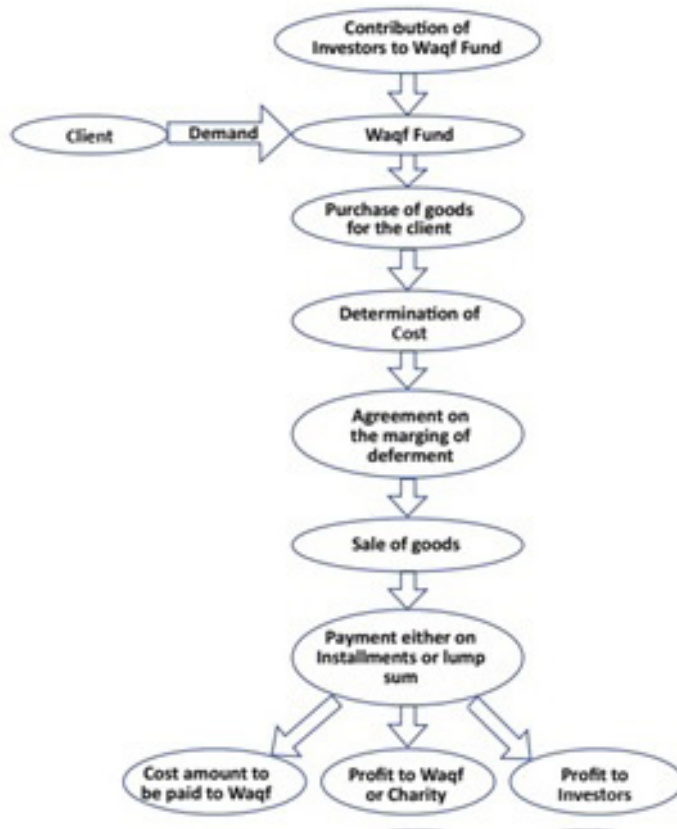
Murabahah is the sale of goods with a profit mark up, developed by Islamic banks as a financing technique. There are two types, purchasing goods without prior promise from customers and buying goods ordered from third parties and selling them to the same customer.⁷⁹ Through cash waqf, this type of financing could

⁷⁸Abdullah, "Waqf: A Proposed Model for Islamic Finance," 20.

⁷⁹Akram Khan, *Islamic Economics and Finance: A Glossary*, 26.

be implemented as model below:

Figure 6. Murabahah Based Financing



Source: Abdullah (2014)⁸⁰

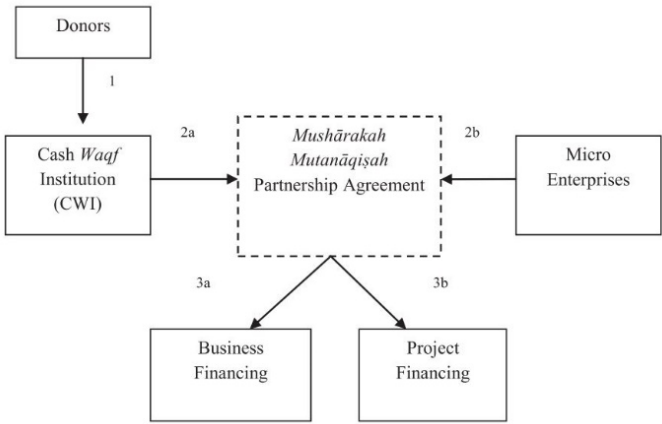
Cash Waqf Investment Through Microfinance

The characteristics of cash waqf such as permanence, irrevocability, and perpetuity differentiate waqf from other type of donations. Therefore, cash waqf-based Islamic microfinance makes

⁸⁰ Abdullah, "Waqf: A Proposed Model for Islamic Finance," 21.

sustainability and providing low-cost capital to poor entrepreneurs without collateral. It also has social implications.⁸¹ Moreover, ICWME-I model combines waqf institutions and micro enterprises through participatory contracts and diminishing partnership financing arrangements as figure showed below:

Figure 7. Integrated Cash Waqf Micro Enterprise Investment (ICWME-I)



Source: Thaker (2018)⁸²

Small and Medium Enterprise (SME) Loan

Cash waqf benefits SME and society by providing financial rewards, increasing liquidity, capital accumulation, and business opportunities.^{83 84} It fosters emerging sectors, creates a social safety

⁸¹Rose Abdullah and Abdul Ghafar Ismail, "Taking Stock of the Waqf-Based Islamic Microfinance Model," *International Journal of Social Economics* 44, no. 8 (2017): 1021, <https://doi.org/10.1108/IJSE-06-2015-0176>.

⁸²Mohamed Asmy bin Mohd. Thas Thaker, "A Qualitative Inquiry Into Cash Waqf Model as a Source of Financing for Micro Enterprises," *IJIF: International Journal of Islamic Finance* 10, no. 1 (2018): 22, <https://doi.org/10.1108/IJIF-07-2017-0013>.

⁸³Muyassar Mukhitdinova Ziyaviddinovna and Khadzhaev Khabibulla Sagdullaevich, "Poverty Reduction by Islamic Waqf System," *Journal of Critical Reviews* 7, no. 4 (2020): 71, <https://doi.org/10.31838/jcr.07.04.14>.

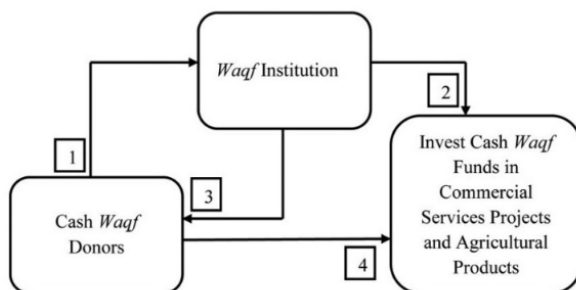
⁸⁴Chowdhury, Ghazali, and Ibrahim, "Economics of Cash Waqf Management in

net, and saves businesses, particularly micro-small enterprises, through digital marketing and financial assistance.⁸⁵ Cash waqf can also provide no-refund financial assistance for starting a business, subject to *mutawalli*.⁸⁶

Cooperative-Waqf Model (CWM)

The proposed CWM in this study aims to address two issues, namely, to promote consistency among cash waqf donors and to solve the liquidity problem faced by waqf institutions. Below the demonstration of the CWM in Malaysia and detailed explanation of the workings of the CWM:

Figure 8. Cooperative-Waqf Model (CWM)



Source: Authors

Source: Pitchay, et. al. (2018)⁸⁷

Stage 1, donors contribute cash waqf to the waqf institution through salary deductions or over-the-counter payments, the

Malaysia: A Proposed Cash Waqf Model for Practitioners and Future Researchers," 12161.

⁸⁵Ascarya, "The Role of Islamic Social Finance During Covid-19 Pandemic in Indonesia's Economic Recovery," *International Journal of Islamic and Middle Eastern Finance and Management* 15, no. 2 (2022): 389, <https://doi.org/10.1108/IMEFM-07-2020-0351>.

⁸⁶Ahmad, "Cash Waqf: Historical Evolution, Nature, and Role As an Alternative to Riba-Based Financing for the Grass Root," 69.

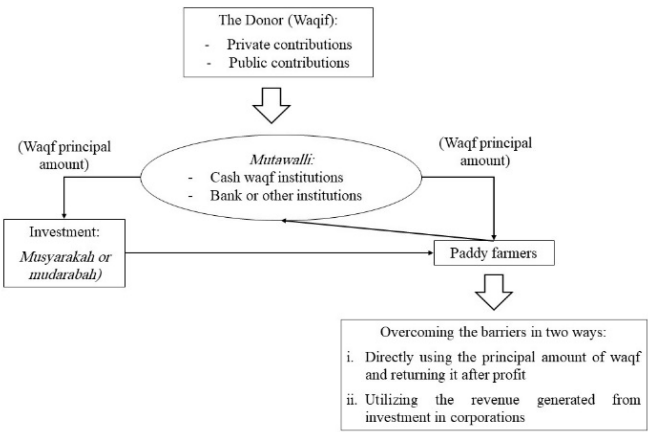
⁸⁷Anwar Allah Pitchay et al., "Cooperative-Waqf Model: A Proposal to Develop Idle Waqf Lands in Malaysia," *IJIF: International Journal of Islamic Finance* 10, no. 2 (2018): 228, <https://doi.org/10.1108/IJIF-07-2017-0012>.

institution issues cash waqf certificates specifying development projects, currently, donors have no idea of cash usage and no incentive for giving except for rewards from Allah and tax deductions. *Stage 2*, the waqf institution will proceed to developing the projects. *Stage 3*, waqf institution will issue *Sahabat Waqf* membership cards to donors with RM 500 annual contributions, based on cooperative concept, subject to change by institution. *Stage 4*, membership grants privileged rates to donors for waqf-based commercial services and agricultural products.

Integrated Cash Waqf Environmental Protection (IWEP) Model

The IWEP model integrates cash waqf to help farmers adapt to climate change. Public and corporate donors contribute cash to Cash Waqf Institutions (CWI) to raise funds in program. Further, figure below shows the IWEP model operation:

Figure 9. Integrated Cash Waqf Environmental Protection (IWEP) Model



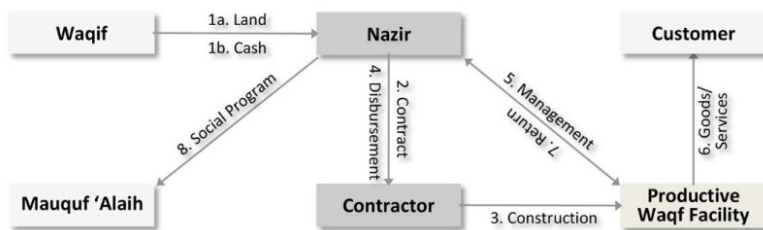
Source: Afroz, Muhibbullah, and Morshed (2019)⁸⁸

⁸⁸Rafla Afroz, Md. Muhibbullah, and Mohammed Niaz Morshed, “Factors Affecting the Intention of the Rice Farmers to Adopt the Integrated Cash Waqf Environmental Protection Model: An Empirical Study in Kedah Malaysia,” *Journal of Asian Finance, Economics, and Business* 6, no. 4 (2019): 192, <https://doi.org/10.13106/jafeb.2019.vol6.no4.189>.

Cash Waqf and Self-Managed

The *nadzir*, the holder of a waqf land trust, develops the land at low cost. They raise funds, enter a property development contract with a contractor, and manage the building's rental and maintenance. As the result, the net profit is used for social and reinvestment programs, and the figure can be seen as below:

Figure 10. Cash Waqf and Self-Managed



Source: Ascarya, Hosen, and Rahmawati (2022)⁸⁹

Cash waqf investment can be conducted through traditional and contemporary schemes, such as Islamic commercial transactions and microfinance. These schemes can include SME loans, cooperative-waqf models, IWEP, ICG, and self-managed cash waqf. As long as pillars of waqf are preserved, these investment methods are valid and effective.

Conclusion

Cash waqf, an Arabic term meaning money, is an Islamic social finance instrument used for investment in productive businesses. Debates exist on its physicality as a consumable asset or perpetuity aspect. Scholars like Syafi'i, Hanbali, Maliki, and Hanafi focus on money as a medium of value for obtaining permanent assets and allow to use it in waqf investment. Cash waqf investment can be conducted

⁸⁹ Ascarya, Muhamad Nadrattuzaman Hosen, and Siti Rahmawati, "Designing Simple Productive Waqf Models for Indonesia," *International Journal of Ethics and Systems* 38, no. 3 (2022): 383, <https://doi.org/10.1108/IJOES-07-2020-0101>.

through traditional and contemporary schemes, including Islamic commercial transactions, microfinance, SMEs loans, cooperative-waqf models, IWEP models, and Islamic Corporate Governance models.

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