

Islamic Banks: Analysis of the Rules of Fiqh on the Fatwa of the National Sharia Board-Indonesian Ulama Council

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Abstract: *Both directly and indirectly, Sharia banking regulations in Indonesia are heavily influenced by the Fatwa of the National Sharia Council-Indonesian Ulema Council. In its fatwas, the National Sharia Council-Indonesian Ulema Council cites many fiqh principles as one of its legal foundations which shows that fiqh rules occupy a crucial position in the fatwas issued by the National Sharia Council-Indonesian Ulema Council. But unfortunately, research and scientific studies related to fiqh principles are currently still relatively few and receive less attention from academics. Therefore, this study aims to find out how fiqh principles are used in the National Sharia Council-Indonesian Ulema Council fatwas related to sharia banking to fill the void in scientific studies and attract scientific interest in this field. This research is normative legal research/legal research. The data used in this study were obtained from the Sharia Banking Fatwa Association compiled by the National Sharia Council-Indonesian Ulema Council. The data is then analyzed using a qualitative content analysis technique, which analyzes the contents of various texts and then systematically transforms them into a very organized and concise main summary. The results of this study indicate that from 2000 to 2018, the National Sharia Council-Indonesian Ulema Council issued 90 fatwas related to Islamic banking. Of the 90 fatwas, 87 fatwas used fiqh principles as one of their legal foundations. Overall, the fiqh principles used in the National Sharia Council-Indonesian Ulema Council Fatwa regarding Islamic banking total 39 principles with a frequency of use of 266 times. Where the rule "Basically, all forms of muamalah may be carried out unless there is an argument that forbids it" is the rule most often used with a frequency of use of 85 times and Fatwa 118/DSN-MUI/II/2018 concerning Guidelines for Guaranteeing Deposits for Customers of Sharia Banks is a fatwa that*

the most use of fiqh rules is as many as 11 rules. Then, the generalization of the 39 fiqh principles used in the National Sharia Council-Indonesian Ulema Council Fatwa regarding sharia banking has at least produced several theories, namely the theory of origin law, the theory of maslahat, the customary theory, the Khilafah theory, the wasilah theory, the promise theory, the majority theory, and several another theory. In addition, the National Sharia Council-Indonesian Ulema Council fatwas related to sharia banking has also made a positive contribution to the development of sharia banking in Indonesia. Finally, for future researchers, we provide suggestions in the form of future research related to the principles of fiqh and the National Sharia Council-Indonesian Ulema Council Fatwa.

Keywords: *Fiqh Rules; Islamic Banks; The National Sharia Council-Indonesian Ulema Council Fatwa.*

1. INTRODUCTION

Islamic financial institutions are institutions that aim to implement Islamic law in the financial sector (Naseem Al Rahahleh, 2019). Even though in essence the concept of Islamic finance has existed and is as old as Islam itself, it cannot be denied that the birth of Islamic banks around 60 years ago was the beginning of the rise of the Islamic finance industry in modern times (Habib, 2018). Islamic banks themselves can simply be interpreted as banks that apply sharia principles in all aspects of their operations (Bahreini, 2021). Where Islamic banks prohibit elements of usury, speculation, gambling, and other prohibited elements and then replace them with profit-and-loss sharing contracts and other contracts that are permitted in Islam (Mohamed Albaity, 2019).

Historically, the establishment of Islamic banks was initiated by the awareness of Muslims of the importance of intermediary institutions which are not against sharia. This is what makes the scholars in Islamic countries try to remove the sharia prohibitions that exist in conventional banks and then replace them with akad which is permissible in Islam (Habib, 2018). This effort ultimately paid off with the establishment of the first Islamic bank in Egypt in 1963 named With Ghamr Bank, then followed Islamic Development Bank in 1975, one of which was to help establish Islamic banks in Islamic countries (Aliyu, 2018). Since then, the Islamic finance industry has developed and grown rapidly in various financial sectors (Ahmed, 2019). In fact, not only in Islamic countries, but even in non-Muslim countries, Islamic banks are increasingly in demand. Until now, there have been at least 300 Islamic banks in 75 countries in the world (Nawaz, 2018).

The same thing also happens in Indonesia, a country with the largest Muslim population in the world (M. R. A. & R. Sholihin, 2022), the presence of banking institutions that do not conflict with sharia is a necessity (Manalu, 2021). In it's history, the development of Islamic banks in Indonesia began with the birth of Bank Muamalat the

first Islamic bank in Indonesia (Mayapada, 2022). The first Islamic bank in Indonesia is supported by Law no. 7 of 1992 which inspired the creation of a dual banking system (conventional and sharia), in which in this law Islamic banks are defined as banks with a profit-sharing system (M. N. R. Al Arif, 2017). Indonesia then officially adopted the dual banking system with Law no. 10 of 1998, which in this law regulates in detail the legal basis and types of business that Islamic banks can run (A. Arif, n.d.) (Rusli, 2018). Then, 2008 Law No. 21 of 2008, which this law is one of the most important juridical elements for the development of the Islamic banking industry in Indonesia (Yasin, 2016). With this law, the Islamic banking industry in Indonesia has become more stable and stronger (Sulistiyono, 2017).

Based on the description above, it appears that regulation plays a very important role in the development of Islamic banking in Indonesia (Kasri, 2019). This is because every innovation made by Islamic banks must pay attention to sharia compliance (N. A. R. et Al, 2020). Therefore, to ensure sharia compliance, every sharia bank in Indonesia must have a Sharia Supervisory Board. The Sharia Supervisory Board will later be tasked with assessing the sharia compliance of the sharia bank concerned. In addition, the Sharia Supervisory Board is also required to consult with the National Sharia Council-Indonesian Ulema Council regarding legal issues which the answer will usually be given in the form of a National Sharia Council-Indonesian Ulema Council Fatwa (Lindsey, 2012). The National Sharia Council-Indonesian Ulema Council fatwas were later adopted by financial regulators in Indonesia such as Bank Indonesia and the Ministry of Finance so that they have binding legal force and must be obeyed by all Islamic banks in Indonesia (Syafei, 2017). Thus, it can be said that Islamic banking regulations in Indonesia, both directly and indirectly, are greatly influenced by the National Sharia Council-Indonesian Ulema Council Fatwa (Lindsey, 2012).

In its fatwas, the National Sharia Council-Indonesian Ulema Council usually cites verses from the Koran, hadith, ijma, qiyas, opinions of scholars, ushul principles, to fiqh principles as their legal basis (Izmuddin, 2018). Of the several legal bases above, fiqh principles are one of the legal bases most often used by the National Sharia Council-Indonesian Ulema Council, of course, in addition to the Koran and hadith. This clearly shows that fiqh principles occupy a crucial position in the fatwas issued by the National Sharia Council-Indonesian Ulema Council. In fact, according to Hermanto, an understanding of the principles of fiqh is something necessary in compiling a fatwa ("The Role of DSN-MUI to Ensure Shariah Compliance of Islamic Financial Transactions in Indonesia (A Political Ambiguity Perspective)," 2018). However, unfortunately, research and scientific studies related to fiqh principles are still relatively few and receive little attention from academics (Daud A Mustafa, 2016). Research on fiqh principles is very important to do because it is one of the important legal arguments and has great benefits in solving legal problems ("Loan's Legal Maxims In Islamic Financial Jurisprudence," 2021). Added to this is the fact that fiqh principles are often used in fatwas issued by the National Sharia Council-Indonesian Ulema Council, and the influence of the National Sharia Council-Indonesian Ulema Council fatwas on Islamic banking regulations in Indonesia, it is necessary to research the fiqh principles used in the National Sharia

Council-Indonesian Ulema Council fatwas related to sharia banking. In other words, as stated by Mustafa you at the. that the main argument regarding the importance of conducting research related to fiqh principles lies in the aspect of their "existence", namely to fill the void in studies related to fiqh principles and attract scientific interest in this field (Daud A Mustafa, 2016). Moreover, as far as our investigation has been carried out, there has been no scientific journal that discusses the issue of fiqh principles in the National Sharia Council-Indonesian Ulema Council fatwas related to sharia banking. Therefore, this research is "probably" the first scientific journal to examine the fiqh principles used in the National Sharia Council-Indonesian Ulema Council fatwas related to Islamic banking.

The objectivity sought in this study is to find out how the fiqh principles used in the National Sharia Council-Indonesian Ulema Council fatwas related to sharia banking. This research is believed to contribute at least two things, namely; 1) theoretically, the results of this study will provide a comprehensive picture of the fiqh principles used in the National Sharia Council-Indonesian Ulema Council fatwas related to Islamic banking to fill the void in scientific journal studies in this field, 2) practically, the results of this research will become literature valuable for various related parties, such as the National Sharia Council-Indonesian Ulema Council, Islamic banks, to academics who have a scientific interest related to fiqh principles.

2. METHODS

This research is normative legal research, namely a type of legal research that explains, criticizes, or corrects a legal doctrine (Sithigh, 2012). Where in general, the legal doctrines studied in this study are the fatwas issued by the National Sharia Council-Indonesian Ulema Council regarding Islamic banking.

The data used in this study is a type of secondary data, namely data obtained through the results of other studies or reports from other organizations (McGuire, 2022). Where the data in this study are in the form of fatwas from the National Sharia Council-Indonesian Ulema Council regarding Islamic banking obtained from the Sharia Banking Fatwa Association compiled by the National Sharia Council-Indonesian Ulema Council (*Himpunan Fatwa Perbankan Syariah*, 2019). As a whole the National Sharia Council-Indonesian Ulema Council has issued 90 fatwas related to sharia banking from 2000 to 2018. the National Sharia Council-Indonesian Ulema Council fatwas related to sharia banking totaling 90 fatwas will then be analyzed using techniques qualitative content analysis, which is a technique of analyzing the contents of a large number of texts and then systematically converting them into a very organized and concise main summary (Brysiewicz, 2017). With this technique, we hope to provide a comprehensive picture of the fiqh principles used in the National Sharia Council-Indonesian Ulema Council fatwas related to Islamic banking.

3. RESULTS AND DISCUSSION

3.1. Fatwa the National Sharia Council-Indonesian Ulema Council

In general, a fatwa can be interpreted as a legal opinion given by a scholar or mufti (fatwa giver) to Mustafa (fatwas seekers). Therefore, the main purpose of issuing a fatwa is to resolve legal issues (Sirry, 2013). In Indonesia, the institution whose job is to provide fatwas regarding legal issues that are the needs of Muslims is the Indonesian Ulema Council (H. H. A. et Al, 2021). In carrying out its role as a fatwa institution, the fatwas issued by the Indonesian Ulema Council have proven to make a positive contribution to the transformation of contemporary Islamic law in Indonesia (Jamaa, 2018).

The Indonesian Ulema Council members consist of representatives of Islamic organizations throughout Indonesia, mostly from Nahdlatul Ulama and Muhammadiyah (Fenwick, 2018). Since its founding in 1975, the Indonesian Ulema Council has issued many fatwas regarding legal issues in various areas of life, starting from beliefs, socio-politics, and halal products, to sharia economics (Fariz Alnizar, 2021). Specifically for fatwas in the field of Islamic economics, the Indonesian Ulema Council has a special body called the National Sharia Council. The National Sharia Council-Indonesian Ulema Council is a body formed by the Indonesian Ulema Council to ensure sharia compliance in the economic field (H. H. A. et Al, 2021). The National Sharia Council-Indonesian Ulema Council has played this role since the birth of Islamic financial institutions in the 1990s until today. This role has intensified since 2003 when the Indonesian Ulema Council issued a fatwa that bank interest is haram (Syafei, 2017).

Fatwas issued by the National Sharia Council-Indonesian Ulema Council are usually motivated by requests from business people, the government, and other interested parties. Therefore, the National Sharia Council-Indonesian Ulema Council fatwas are directly functional and can stimulate national economic growth (Amin, 2017). Later, many of the National Sharia Council-Indonesian Ulema Council fatwas were adopted into government regulations so that various parties would take them seriously (Mudzhar, 2013). In addition, financial regulators in Indonesia such as Bank Indonesia and the Ministry of Finance have also adopted many of the National Sharia Council-Indonesian Ulema Council fatwas which in the end have made these fatwas legally binding and must be obeyed by all Islamic banks in Indonesia (Syafei, 2017). Therefore, it can be said that Islamic banking regulations in Indonesia, both directly and indirectly, are greatly influenced by the National Sharia Council-Indonesian Ulema Council Fatwa (Lindsey, 2012).

In its fatwas, the National Sharia Council-Indonesian Ulema Council usually cites verses from the Koran, hadith, ijma, qiyas, opinions of scholars, ushul principles, to fiqh principles as their legal basis (Izmuddin, 2018). Of the several legal bases above, fiqh principles are one of the legal bases most often used by the National Sharia Council-Indonesian Ulema Council, of course, in addition to the Koran and hadith. This clearly shows that fiqh principles occupy a crucial position in the fatwas issued by the National Sharia Council-Indonesian Ulema Council.

3.2. Fiqh Rules in the National Sharia Council-Indonesian Ulema Council Fatwa Regarding Sharia Banking

Lexically, fiqh rules or qawaid fihiyyah are derived from the word rule and jurisprudence, qawaid refers to the meaning of a provisional rule or principle jurisprudence refers to the meaning of Islamic law (Sayyed Mohamed Muhsin, 2019). In simple terms, fiqh rules (jurisprudence) can be defined as general principles in establishing Islamic law that can be applied to various cases that are compatible with these rules (B. S. & A. Abdullah, 2016). Fiqh principles are generally a summary of fiqh rules that are interrelated with each other and are compatible with the Qur'an and hadith (Daud A Mustafa, 2016). The form of fiqh rules is usually in the form of a short expressive statement but contains the meaning and purpose of sharia. This statement is sometimes taken directly from the text of the Koran and hadith but most of them are the work of scholars and scholars' mujtahid which was then perfected by other scholars (Kamali, n.d.).

Many fiqh rules have been made by scholars, but five main rules cover most fiqh issues and are agreed upon by most scholars. The five main rules are; 1) each case depends on its intention, 2) belief cannot be dispelled by doubt, 3) difficulties can attract convenience, 4) harm must be eliminated, and 5) custom can become law (N. A. R. et Al, 2020) (Kamali, n.d.) (Musa, 2014) (Daud A Mustafa, 2016) (Zakariyah, 2012b) (Badar, 2011). From these five main principles, the scholars make new fiqh rules which are then referred to as derivative rules or branch rules (B. S. & A. Abdullah, 2016).

Understanding the principles of fiqh is important in establishing law. Without mastering the principles of fiqh, one cannot become a good judge or lawyer (Muhammad Taufiki, 2022). This included establishing a fatwa, where an understanding of the principles of fiqh is something necessary (H. H. A. et Al, 2021). Then, in the Sharia Banking Fatwa Association issued by the National Sharia Council-Indonesian Ulema Council, between 2000-2018 90 fatwas have been issued related to Islamic banking, most of which use fiqh principles as one of their legal bases.

From 2000 to 2018, 90 fatwas have been issued regarding sharia banking. Of the 90 fatwas, it appears that fatwa 118/DSN-MUI/II/2018 is the fatwa that uses the most fiqh rules, namely 11 rules, followed by fatwa 109/DSN-MUI/II/2017 which uses 9 rules. The remaining 4 fatwas with 8 rules, 1 fatwa with 7 rules, 2 fatwas with 6 rules, 14 fatwas with 5 rules, 8 fatwas using 4 rules, 9 fatwas using 3 rules, 19 fatwas using 2 rules, 28 fatwas with 1 rule, and 3 fatwas without any fiqh rules at all. This shows how crucial the use of fiqh principles is in Islamic banking fatwas issued by the National Sharia Council-Indonesian Ulema Council, with evidence that out of 90 fatwas 87 of them use fiqh principles. There are only 3 fatwas that do not use fiqh principles in their considerations, namely fatwas 24/DSN-MUI/III/2002, 28/DSN-MUI/III/2002, and 89/DSN-MUI/XII/2013.

the 87 Islamic banking fatwas that use fiqh principles, the National Sharia Council-Indonesian Ulema Council has at least cited 39 fiqh principles with a frequency of 266 citations. Where are the rules *"Basically, all forms of muamalah can be done unless there is evidence that prohibits it"* seems to be the prima donna with a frequency of use of 85

times, followed by rules "The need can occupy an emergency position" 22 times, rule "The danger (heavy burden) must be eliminated" and "Something that happens based on custom is the same as something that happens based on Sharia' (as long as it does not conflict with Sharia)" 19 times each, rule "Where there is a benefit, there is God's law" 18 times, rule "Difficulty attracts ease" 17 times, rule "The actions of the Imam [those in authority] towards the people must follow mashlahat" 16 times, rule "Avoiding mafsadat (damage, danger) must take precedence over bringing benefits" 14 times, rule "All madharat (danger) must be avoided as much as possible" 11 times, and rules "Adat (community habits) is used as the basis for determining the law" 4 times. The rest are rules with codes E, X, H1 every 3 times, rules with codes L, M, W, Y, F1, G1 every 2 times, and rules with codes N, O, P, Q, R, S, T, U, V, Z, A1, B1, C1, D1, E1, I1, J, K1, L, M1 1 time each.

Then, as mentioned in the method section, this research uses techniques qualitative content analysis, which is an analysis technique of the contents of many texts and then systematically converting them into a main summary that is highly organized and concise (Brysiewicz, 2017), we generalize the fiqh principles used in Islamic banking fatwas into the following theories:

1. Theory of Law

In this theory, there is a branch rule *"Basically, all forms of muamalah can be done unless there is evidence that prohibits it"* which is a derivative of the main rule *"Faith cannot be dispelled by doubt"* (Zakariyah, 2012b). One of the legal basis of the formulation of this rule is QS. al-Baqarah [2]: 29 which means, *"Allah SWT. created all that is on earth for you ..."*. In general, this rule implies that the basic law of muamalah transactions is permissible. So whatever the transaction is, as long as the transaction is not prohibited or contains elements that are prohibited in the Shari'a, then the transaction is permissible to do (Muhammad Taufiki, 2022).

A simple example of the application of this original law theory is Fatwa 01/DSN-MUI/IV/2000 concerning Giro (Salam, 2021). Where one of the banking products in the field of raising funds from the public is current accounts, but current accounts at conventional banks contain an element of interest (usury) which is prohibited in the Shari'a. Therefore, by replacing the prohibited elements with sharia contracts such as mudarabah and with, then the statutory giro is permissible because there is no argument stating that the statutory giro is unlawful. There is only a prohibition against the element of usury, but this element has been removed and replaced with a contract mudharabah norwadiyah. Then, Fatwa 01/DSN-MUI/IV/2000 also contributed greatly to the development of Islamic banking in Indonesia because it is one of the main legal bases for Islamic banking fundraising products in Indonesia (Utama, 2018).

2. Mashlahat Theory

There are at least 2 main rules, namely the rules *"Difficulties attract ease"* one of the basic formulations is QS. al-Baqarah [2]: 185. In general, this theory is in line with the objectives of the Shari'a (maqasid syariah), which is to bring benefits or goodness

to humans, both in this world and in the hereafter. One of the efforts to achieve these benefits is to remove all harm, both in form and form *masyaqqah* (difficulty) or in form urgent (danger/damage). *Masyaqqah* is usually a difficulty at the level of secondary needs (*hajiyat*), whereas urgent is usually a hazard that threatens primary needs (*dharuriyat*) (Abdallah, 2010) (Sayyed Mohamed Muhsin, 2019) (Ahasanul Haque, 2017) (Rahim, 2020). This theory also shows that preventing harm is prioritized over bringing benefit, so that when in an event there is a conflict between benefit on one side and harm on the other hand, then this must be abandoned because preventing damage is more important (N. A. R. et Al, 2020). Therefore, according to Sheikh Izzuddin Ibn Abdissalam, this rule is a summary of all Islamic law, namely to reject harm and bring benefit to humans (Kamali, n.d.).

One example of the application of this *maslahat* theory can be seen in Fatwa 118/DSN-MUI/II/2018 concerning Guidelines for Guaranteeing Customer Deposits of Islamic Banks (Hartanto & Sup, 2021). Where to prevent harm in the form of loss of customer deposit funds (both in the form of savings, current accounts and deposits) in Islamic banks, a Deposit Guaranteeing Institution was formed which has the task of guaranteeing customer deposit funds and actively participating in maintaining the stability of the banking system according to their authority. This of course will bring benefit to all parties, in which the customer gets a security guarantee for the funds he has deposited, the Islamic bank gets the trust of the customer and is helped to maintain financial stability, and the Deposit Guaranteeing Institution gets a premium from the Islamic bank for the guarantee services it performs.

This fatwa also contributes to providing legal clarity regarding sharia deposit insurance. According to CPIDIS (International Association of Deposit Insurance and Islamic Financial Services Board), there is no problem in insuring deposits from *wadiah* contracts with Deposit Guaranteeing Institutions, but when these funds come from *mudharabah* agreements this needs to be considered. Meanwhile, pure *wadiah* deposits are rare in Indonesia. Therefore, to maintain the benefit and several other considerations, the National Sharia Council allows *wadiah* or *mudharabah*-based deposits to be insured by Deposit Guaranteeing Institution through Fatwa 118/DSN-MUI/II/2018 concerning Guidelines for Guaranteeing Deposits for Customers of Islamic Banks. From this it can be seen how this fatwa contributes to providing legal clarity for guaranteeing customer deposit funds to maintain sharia compliance in Islamic banking in Indonesia.

3. Cultural Theory

In this theory, the rule *"Cultural (community habits) is used as the basis for determining the law"* is a basic rule that derives other rules as branch rules, including:

- a. *"Something that happens based on custom is the same as something that happens based on Sharia' (as long as it does not conflict with Sharia)"*,
- b. *"Laws based on custom (customs) apply with said custom and cancel (not apply) with it when the custom is canceled"*,

- c. *"Any law based on an 'urf (tradition) or custom (customs of the community) becomes null and void when the custom is lost. Therefore, if customs change, then the law also changes",*
- d. *" Something that is known (occurs) by custom (based on custom) has the same status as something that is set as a condition", dan*
- e. *" Something that is known (occurs) customarily (based on custom) between fellow traders has the same status as something that is set as a condition between them".*

One of the legal bases used by scholars in formulating this rule is QS. al-A'raf [7]: 199 which means, "Be thou forgiving and order people to do what is good, and turn away from stupid people." Then, in a hadith it is also told that there was a woman who complained to Rasulullah SAW. about her husband being miserly in supporting himself and his children, then the woman wants to take her husband's property to meet her and her children's needs. Rasulullah saw. then allowed to take the property at a rate that according to custom can meet the needs of him and his children (Daud A Mustafa, 2016). Apart from that, another basis for the formulation is a statement from a friend, Abdullah bin Mas'ud, who stated that, *"what is good according to Muslims is good according to Allah"* (Kamali, 2006).

In general, this rule states that customs or habits that apply in society (whether in the form of words, requirements, actions, etc.) can be used as legal provisions as long as they do not conflict with Islamic law. So that if in an event there is no law found in the Shari'a, then the law that applies to the event is customary law (Daud A Mustafa, 2016) (Kamali, 2006). In other words, this rule makes customary law obtain legality from Islamic law (Zakariyah, 2012b) (Zakariyah, 2012a). However, in this rule there are several exceptions, for example if the custom has been abandoned and is no longer valid, or if the custom turns out to be contrary to Sharia law, then in that condition the custom cannot be used as a legal basis and must be abandoned.

One example of the application of this adat theory can be seen in the Fatwa 77/DSN-MUI/V/2010 concerning Cashless Gold Trading (Hartanto & Sup, 2021). Where in this fatwa it is stated that people's habits at this time often carry out gold buying and selling transactions using non-cash payments, either in installments (*taqsith*) or tough (*ta'jil*). While among the scholars there are differences of opinion regarding the permissibility of this, the majority of scholars forbid it because gold is considered a medium of exchange (or money), but there are also those who allow it because gold is considered an item. In this case, the National Sharia Council-Indonesian Ulema Council chose the opinion that allowed it because according to the current custom (both in Indonesia and other countries) gold is a valuable item or jewelry, not money or a medium of exchange (Zamani, 2016).

Fatwa 77/DSN-MUI/V/2010 concerning Cashless Gold Trading is also a response to a letter from Bank Mega Syariah No. 001/BMS/DPS/I/10 dated 5 January 2010 regarding Application for Fatwa Murabahah Emas, so with this fatwa, Islamic banking in Indonesia can develop its products through non-cash buying and selling of gold, of

course while still paying attention to sharia provisions. From this it can be seen how this fatwa has contributed to the development of sharia banking products in Indonesia.

4. Khilafah Theory

This theory consists of 2 rules, "*The actions of the Imam [the authority] towards the people must follow the maslahat*" and "*The government's decision (authority holder) in the matter of ijihad eliminates ikhtilaf.*" Broadly speaking, this theory shows that the government as the holder of authority, in every policy it makes must be based on the consideration that the policy will bring benefit to the community (Iswanto, 2020). This of course still has something to do with the maslahat theory that has been put forward before. In addition, when in society it happens disagreements or differences of opinion in legal matters, then the provisions issued or decreed by the government (the National Sharia Council-Indonesian Ulema Council) are the most appropriate to follow to create legal certainty and eliminate disagreements among the community (Hosen, 2012).

One example of the application of this caliphate theory is Fatwa 84/DSN-MUI/XII/2012 concerning the Method of Recognizing Al-Tamwil bi al-Murabahah Profits (Murabahah Financing) in Islamic Financial Institutions (Hartanto & Sup, 2021). Where in recognizing the benefits of murabahah financing at Islamic financial institutions (including Islamic banks), there are 2 recognition methods, namely the proportional method and the annuity method. The application of one of the two methods creates problems for the industry and society, so it requires clarity from the sharia aspect regarding the two methods of recognition. In this case, the National Sharia Council-Indonesian Ulema Council as the authority holder issued a fatwa that the method of recognizing profits in Murabaha financing may be carried out either proportionally or in an annuity manner by the prevailing custom at shariah financial institution. However, to pay attention to the benefits of healthier shariah financial institution growth, it was decided that the method of recognizing profits in murabahah financing which is more beneficial for shariah financial institution growth is the annuity method (Salam, 2021). From this it is clear how this fatwa contributes to providing legal certainty as well as eliminating ikhtilaf by choosing the method of recognizing the benefits of murabahah financing which is more beneficial for the development of Islamic banking in Indonesia.

5. Wasilah Theory

In this theory there are several rules, namely the rule "*Wasilah (means) has the law of purpose*", "*Something that becomes wasilah and dzari'ah (means) towards something takes (has) the status of the law, either obligatory, nadb (recommended), permissible, makruh, or haram*", "*Something that cannot be done as a goal can be done as a supporter (part of another) and follower (complementary)*", "*Something that cannot be done when it is a goal can be done when it is a follower (complementary)*", "*Something that cannot be done when standing alone can be done when being a supporter (part of another)*", "*If an obligation cannot be fulfilled except with something, then that something is legally obligatory*". In general, this theory shows that the law of a referee or intermediary is the same as the law of the case in question.

So that if a case is legally obligatory then the intermediary to reach the case is also obligatory, if a legal case is unlawful then the intermediary to reach the case is also unlawful, and so on (Sahidin, 2021). Even so, sometimes there is something that cannot be done when it becomes a goal or stands alone, but may be done when only as an intermediary or compliment.

One example of the application of this theory is Fatwa 79/DSN-MUI/III/2011 concerning qardh using customer funds (Hartanto & Sup, 2021). Where Islamic banks are not allowed to use customer funds in qardh contracts to gain profits, because qardh is a social contract and not a commercial contract. However, if the contract is only carried out as a complement to other transactions such as Hajj Management Financing, then this is permissible. Where sharia banks here play a role in helping the management of the pilgrimage. In addition, Islamic banks can also help bail out the payment of customers' pilgrimage fees by using a qardh contract. In this case, Islamic banks are entitled to receive ujah for the services they have provided the ujah is not based on the number of bailout funds (Prasetyo, 2017). From this it can be seen how this fatwa has contributed to the development of sharia banking products in Indonesia in the management of the pilgrimage which is very potential considering a large number of prospective pilgrims in Indonesia.

6. Promise Theory

This theory has several rules, namely rules *"Promises with conditional forms are binding"*, *"(Promises) which are associated with conditions, must be fulfilled if the conditions have been met"*, *"Anyone who imposes something on himself voluntarily without coercion, then, that something becomes his obligation"*, and *"Who is committed to doing something good, then he is obliged to do it"*. In general, this theory states that promises that have been agreed upon must be kept as long as they do not conflict with the provisions of the Shari'a (N. I. Abdullah, 2010). Including when the promise is associated with certain conditions, so that when these conditions have been fulfilled, the promise that has been made must be kept.

One example of the application of this theory is Fatwa 96/DSN-MUI/IV/2015 concerning Sharia Hedging Transactions (Al-Tahawwuth Al-Islami /Islamic Hedging) Over Exchange Rates (Hartanto & Sup, 2021). Where to mitigate the risk of uncertainty in the movement of fluctuating foreign currency exchange rates, it is necessary to have hedging instruments in Islamic financial institutions, including in this case banks. In the mechanism, the parties to the transaction promise each other (mutua'adah), either in writing or not in writing, to conduct one or more Spot Transactions in the future which includes an agreement on: (1) the currency being traded, (2) the nominal amount, (3) the exchange rate or calculation of the exchange rate, and (4) execution time. Then, when the execution time comes, the parties carry out Spot Transactions (acceptance) at an agreed price followed by a handover of the currency exchanged. From this it is clear how the elements of promises and their fulfillment play an important role in sharia hedging transactions. From this it can be seen how this fatwa contributes to providing solutions that are not against sharia to help mitigate risks from currency fluctuations (Setiawan, 2022).

7. Majority Theory

This theory consists of several rules, namely the rule *"The law for the most is the same as the law for the whole"*, *"In principle, something is followed by the dominant, not by the rare"*, and *"When something happens between the many and the few, it is followed by the many"*. In general, this theory states that if in an event there are several different or conflicting laws, then the law for the event as a whole follows the most common, many, or dominant laws. For example, in a financial institution where the majority of its activities are by sharia principles and a small number of activities are contrary to principles, the financial institution can be declared an Islamic financial institution (Lathif, 2020).

An example of the application of this theory is Fatwa 119/DSN-MUI/II/2018 concerning Ultra Micro Financing (Al-Tamwil Li Al-Hajah Al-Mutanahiyat Al-Shughra) Based on Sharia Principles (Hartanto & Sup, 2021). Where in sharia ultra-micro financing there are two types of financing, namely multi-service financing and multi-goods financing. Ultra-micro multi-service financing is ultra-micro financing whose object is a variety of services, or goods and services whose services are more dominant. From this it can be seen how the domination of service objects over goods objects makes this type of ultra-micro financing punishable as multi-service financing. Meanwhile, multi-goods ultra-micro financing is financing whose objects are in the form of a variety of goods, or goods and services whose goods are more dominant. From this it can be seen how the domination of goods objects over service objects makes this type of ultra-micro financing punishable as multi-goods financing. In other words, ultra micro-financing is punished according to the core interest/majority of the transaction (M. Sholihin, 2020). This fatwa contributes to legal clarity the mix of goods and services in sharia ultra-micro financing provided by sharia banking in Indonesia is not gharar which is prohibited.

8. Other Theories

- a. Rule *"Everything that (the right or form) is similar and cannot be differentiated unless it is drawn, must be drawn."*
- b. Rule *"People and the bird It isrma can't forced"* (M. Sholihin, 2020).
- c. Rule *"Comparative risk and benefits"* (B. S. & A. Abdullah, 2016).
- d. Rule *"Indeed, the time has a portion of the price"* This rule has the meaning that time, sooner or later, actually has an influence and value that deserves respect (Santika, 2022). An example of the application of this rule is found in Fatwa 111/DSN-MUI/IX/2017 concerning Murabahah Sale and Purchase Contracts (*"The Role of DSN-MUI to Ensure Shariah Compliance of Islamic Financial Transactions in Indonesia (A Political Ambiguity Perspective)"*, 2018). Where in buying and selling murabahah carried out by Islamic banks with customers, the selling price between payments made in cash and payments in stages/installments is of course different.

- e. Rule "Legal determination depends on the presence or absence of 'God', this rule meaning that god (cause) is the basis for legal provisions that apply to an event (Salam, 2021).

Based on the description above, it can be seen how the five fatwas above have contributed greatly to assisting the development of sharia banking products in Indonesia through sharia provisions that provide convenience and contain benefits.

4. CONCLUSIONS

From 2000 to 2018, the National Sharia Council-Indonesian Ulema Council issued 90 fatwas related to sharia banking. Of the 90 fatwas, 87 fatwas used fiqh principles as one of their legal foundations. Overall, the fiqh principles used in the National Sharia Council-Indonesian Ulema Council Fatwa regarding Islamic banking total 39 principles with a frequency of use of 266 times. Where are the rules "*Basically, all forms of muamalah can be done unless there is evidence that prohibits it*" is the rule most often used with a frequency of use of 85 times and Fatwa 118/DSN-MUI/II/2018 concerning Guidelines for Guaranteeing Customer Deposits in Islamic Banks is the fatwa that uses the most fiqh rules, namely 11 rules. Then, the generalization of the 39 fiqh principles used in the National Sharia Council-Indonesian Ulema Council Fatwa regarding sharia banking has at least produced several theories, namely the theory of origin law, the theory of maslahat, the customary theory, the Khilafah theory, the wasilah theory, the promise theory, the majority theory, and several another theory. In addition, the National Sharia Council-Indonesian Ulema Council fatwas related to sharia banking has also made a positive contribution to the development of sharia banking in Indonesia.

One of the findings from this study shows that the rule "*Basically, all forms of muamalah can be done unless there is evidence that prohibits it*" is the rule most often used with a frequency of use of 85 times and Fatwa 118/DSN-MUI/II/2018 concerning Guidelines for Guaranteeing Customer Deposits in Islamic Banks is the fatwa that uses the most fiqh rules, namely 11 rules. Therefore, future researchers can carry out 2 interesting follow-up studies, namely; 1) Criticize the frequent use of rules "*Basically, all forms of muamalah can be done unless there is evidence that prohibits it*" on the National Sharia Council-Indonesian Ulema Council Fatwa, and 2) Criticizing the many fiqh principles used in Fatwa 118/DSN-MUI/II/2018 concerning Guidelines for Guaranteeing Customer Deposits of Islamic Banks.

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