

## **Epistemology of Fatwas on Digital Transaction in Indonesia**

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### **Abstract**

The shift from conventional business transactions to digital business transactions, especially for the Muslim community in Indonesia, necessitates a fast and reactive response from current laws. The theoretical argument that has been developed thus far is that the fatwa is the most appropriate legal tool for Muslim communities to respond to the rapid development of digital business. Nevertheless, do the existing fatwas fulfill legal needs as expected in this era of digital transactions? Hence, this paper discusses digital transaction fatwas within the framework of Islamic legal epistemology, especially fatwas from the National Shariah Council–Indonesian Ulama Council. The research method uses normative juridical with a conceptual and historical-*usuliyah* approach. This research finds that the contemporary fatwa epistemology of the National Shariah Council–Indonesian Ulama Council in terms of digital transactions employs *istislahi* arguments. This is shown by the proposition that fiqh



rules are more dominant than textual ones. Moreover, the arguments in the fatwa of the National Shariah Council–Indonesian Ulama Council provide signs of benefit as the estuary of *maqasid syari'ah*. The consistency of the use of legal methodology utilized by the National Shariah Council–Indonesian Ulama Council in fatwas on digital transactions is shown in the structure and utilization of *al-nusus al-shariah* arguments, the opinions of ulama, and the rules of fiqh, which are expanded from the five rules of fiqh into eight rules. These fatwas are reliable and valid in terms of dictum and method, thus supporting the development of the current digital transactions.

**KEYWORDS** *Digital Transaction; Fatwa; Islamic Law Epistemology.*

### **Abstrak**

Pergeseran transaksi bisnis konvensional ke transaksi bisnis digital, khususnya bagi masyarakat muslim di Indonesia membutuhkan respon yang cepat dan reaktif dari hukum yang ada saat ini. Argumentasi teoritis yang selama ini dikembangkan adalah fatwa merupakan sarana hukum yang paling tepat bagi masyarakat muslim untuk merespon cepatnya perkembangan bisnis digital. Namun, hal tersebut belum dapat memenuhi kebutuhan hukum sesuai dengan yang diharapkan, karena masih berorientasi pada hukum Islam klasik. Tulisan ini membahas fatwa transaksi digital dalam kerangka epistemologi hukum Islam khususnya fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia. Metode penelitian menggunakan yuridis normatif dengan pendekatan konseptual dan *historis-usuliyah*. Tulisan ini menemukan bahwa epistemologi fatwa kontemporer Dewan Syariah Nasional-Majelis Ulama Indonesia tentang transaksi digital dengan menggunakan dalil *istislahi*. Hal ini terlihat dari dalil bahwa kaidah fikih lebih dominan dibandingkan tekstual. Selain itu, dalil dalam fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia juga memberikan tanda-tanda masalah sebagai muara *maqasid syari'ah*. Konsistensi penggunaan metodologi hukum yang digunakan oleh Dewan Syariah Nasional-Majelis Ulama Indonesia dalam fatwa tentang transaksi digital dapat dilihat pada struktur dan penggunaan dalil *al-nusus al-syar'iyah*, pendapat para ulama, dan kaidah-kaidah fikih yang diperluas dari lima kaidah fikih menjadi delapan kaidah. Fatwa-fatwa tersebut bersifat reliabel dan valid dari segi diktum dan metode, sehingga mendukung pengembangan transaksi digital saat ini.

**KATA KUNCI** *Epistemologi Hukum Islam; Fatwa; Transaksi Digital.*

## Introduction

Digital transformation has triggered the movement of economic transactions from physical to virtual spaces, which created a discontinuity between the legal framework and its practical application.<sup>1</sup> In response, legal experts should investigate legal issues to bridge the gap between law and practice. Legal discovery (*rechtsvinding*) is a process of reaction to legal issues (*rechtsvragen*) and basic phenomena that occur as an effort to “concretize” laws that are public and abstract.<sup>2</sup> This term in the scientific tradition of Islamic law is called *ijtihād*. The *ijtihād* is the scientific creative research of a *mujtahid* in discovering the law.<sup>3</sup> Meanwhile, in fatwa terminology, this term is known as *al-iftā*, that is, the process of determining a fatwa.<sup>4</sup> Fatwa covers more specific aspects than just fiqh, which is a legal product in the modern era compared to fiqh.<sup>5</sup> According to Hooker, a fatwa is an official answer<sup>6</sup> by a mufti to a question (*istiftā*)<sup>7</sup>

<sup>1</sup> Svetlana Nosova, et al. "Digital transformation as a new paradigm of economic policy." *Procedia Computer Science* 190 (2021): 657-665. <https://doi.org/10.1016/j.procs.2021.06.077>; Abdul Aziz and Umma Naima, "Rethinking Digital Financial Inclusion: Evidence from Bangladesh," *Technology in Society* 64 (2021): 101509, <https://doi.org/https://doi.org/10.1016/j.techsoc.2020.101509>; Faheem Ur Rehman et al., "Information Digitalization and Renewable Electricity Generation: Evidence from South Asian Countries," *Energy Reports* 9 (2023): 4721-33, <https://doi.org/https://doi.org/10.1016/j.egy.2023.03.112>; Meaad Turki et al., "The Regulatory Technology 'RegTech' and Money Laundering Prevention in Islamic and Conventional Banking Industry," *Heliyon* 6, no. 10 (2020): e04949, <https://doi.org/https://doi.org/10.1016/j.heliyon.2020.e04949>.

<sup>2</sup> Zaenal Asikin, *Pengantar Ilmu Hukum*, 2nd ed. (Jakarta: Rajawali Press, 2013), 93.

<sup>3</sup> Imran Ahsan Khan Nyazee, *Theories of Islamic Law the Methodology of Ijtihād* (Malaysia: The Other Press, 2002); Maulana Muhammad Ali, *The Religion of Islam*, 6th ed. (Ohio U.S.A: Ahmadiyya Anjuman Isha'at Islam, 1990); Yūsuf al-Qardāwī, *Dasar Pemikiran Hukum Slam: Taklid <Ijtihad*, Terj. Husa (Jakarta: Pustaka Firdaus, 2003).

<sup>4</sup> Ma'ruf Amin, *Fatwa Dalam Sistem Hukum Islam*, 5th ed. (Depok: Elsas, 2017), 23.

<sup>5</sup> Ahmad Rofiq, *Hukum Perdata Islam Di Indonesia*, Revisi (Jakarta: Rajawali Press, 2013), 5.

<sup>6</sup> M B Hooker, *Indonesian Islam: Social Change Thought Contemporary Fatāwā* (Australia: Asian Studies Association of Australia in Association with Allen & Unwin, 2003), 1.

<sup>7</sup> Wael B Hallaq, *Authority, Continuity, and Change in Islamic Law*, 2nd ed. (UK: Cambridge University Press, 2004), 174.

posed to him with regard to actual problems in religious norms (legal) matters.<sup>8</sup>

As with fiqh, people's compliance with fatwas is relative and has no binding force (*ghoir mulzimah*).<sup>9</sup> That means, a *mustafti* is not obligated to accept the fatwa given to him. However, psychologically, the existence of a fatwa has a positive influence on the growth of public religious awareness (*mustafti*) and a vital role in the framework of responding to empirical religious problems (*al-masāil al-dīniyah al-waqī'iyah*).<sup>10</sup> Furthermore, philosophically, a fatwa actually transmits dynamically the law of Allah SWT. Nonetheless, the content of the fatwa is not certain to be dynamic because the existing fatwa is a recipe of turats produced from the *mufti*'s readings.<sup>11</sup> Hence, responsiveness is required in fatwas to address the needs of the contemporary era.

Fatwas are not made by just anyone, but by *mufti*. To be called a *mufti*, one who is morally and scientifically important must, of course, meet several requirements. A *mufti* must understand various aspects of Islamic law and the supporting arguments that will be explained below. However, that alone is not enough; a *mufti* must get social (moral) recognition that his words deserve to be heard<sup>12</sup>. Giving a fatwa is so difficult. Thus, the tradition of giving fatwa in Indonesia is now the

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<sup>8</sup> Says : "*tabyīn al-hukm as-shar'iy liman sāla anhu*". See: Muhammad Abu Zahrah, *Uṣūl Al-Fiqh* (Beirut: Dar al-Fikr, n.d.), 400–406; Alī bin Muḥammad Abū Hasan al- Jurjānī, *Al-Ta'rifāt* (Beirut: Dār al-Kutub al-Ilmiyyah, n.d.); Fāyūmī Al-, *Al-Miṣbāḥ Al-Munīr Fī Gharīb Al-Syarḥ Al-Kabīr Li Al-Rāfi'ī* (Mesir: Majba'ah al-Amiriyah, 1965).

<sup>9</sup> Muhammad Abū al- Ajfān, *Fī Fatāwā Al-Imām Al-Shātībī* (Tunis: Najh li al-Wardiyah, n.d.), 67.

<sup>10</sup> Rofiq, *Hukum Perdata Islam Di Indonesia*, 5.

<sup>11</sup> Rofiq, 27.

<sup>12</sup> In this case a mufti must have the following characteristics: 1) intention; 2) broad knowledge, patience, authority, and serenity; 3) strong and deep knowledge; 4) the have, so he does not expect gifts; and 5) knowing human nature. See: Ibn Qayyim al- Jauziyyah, *I'lām Al-Muwāqqi'īn an Rāb Alamīn.*, vol. 3 (Beirut: Dar al-Fikr, n.d.), 199; Abū Ishāq al-Syatībī, *Al-Muwāfaqat Fī Uṣūl Al-Syari'ah*, vol. 3 (Kairo: Dār al-Fikr al-Arabi, n.d.); Abū Ishāq al- Syatībī, *The Reconciliation of the Fundamentals of Islamic Law*, Trans. Imr, vol. 1–2 (Lebanon: International Press, 2012).

authority, as expressed by M. Quraish Shihab<sup>13</sup>, given to religious institutions (*al-fatwa al-ijmā'i*), which includes the following: the NU Bahtsul Masail Institute, Majelis Tarjih and Tajdid Muhammadiyah, Hisbah Persis Council, Indonesia Ulama Council, and the National Shariah Council—which structurally was part of the Indonesia Ulama Council—which specifically gave fatwa on sharia economic law in Indonesia.

The National Shariah Council–Indonesian Ulama Council was formed in response to the rapid progress in terms of the Islamic economy<sup>14</sup>, which includes Islamic financial institutions, Shariah Business Institutions, and Shariah Economic Institutions in Indonesia.<sup>15</sup> The reason is that its development requires the support of related parties to provide guidance, supervision, and direction to run in a healthy and sustainable manner.<sup>16</sup>

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<sup>13</sup> Quraish Shihab M., *Era Baru, Fatwa Baru, Dalam MB. Hooker, Islam Mazhab Indonesia: Fatwa-Fatwa Dan Perubahan Sosial*, Cet Ke 2 (Bandung: Mizan, 2003), 16.

<sup>14</sup> Ibrahim Niankara, “The Impact of Financial Inclusion on Digital Payment Solution Uptake within the Gulf Cooperation Council Economies,” *International Journal of Innovation Studies* 7, no. 1 (2023): 1–17, <https://doi.org/https://doi.org/10.1016/j.ijis.2022.09.004>; Muhammad Alfarizi and Rini Kurnia Sari, “Adoption Of Cash on Delivery (COD) Payment System in Shopee Marketplace Transaction,” *Procedia Computer Science* 227 (2023): 110–18, <https://doi.org/https://doi.org/10.1016/j.procs.2023.10.508>; Habib A Islam et al., “Understanding Transaction Platform Governance and Conflicts: A Configuration Approach,” *Technological Forecasting and Social Change* 189 (2023): 122382, <https://doi.org/https://doi.org/10.1016/j.techfore.2023.122382>; Mesut Pişkin and Merve Can Kuş, “Islamic Online P2P Lending Platform,” *Procedia Computer Science* 158 (2019): 415–19, <https://doi.org/https://doi.org/10.1016/j.procs.2019.09.070>.

<sup>15</sup> Emmanuel Joel Aikins Abakah et al., “Dynamic Effect of Bitcoin, Fintech and Artificial Intelligence Stocks on Eco-Friendly Assets, Islamic Stocks and Conventional Financial Markets: Another Look Using Quantile-Based Approaches,” *Technological Forecasting and Social Change* 192 (2023): 122566, <https://doi.org/https://doi.org/10.1016/j.techfore.2023.122566>; Fei Zou et al., “Natural Resources and Green Economic Recovery in Responsible Investments: Role of ESG in Context of Islamic Sustainable Investments,” *Resources Policy* 86 (2023): 104195, <https://doi.org/https://doi.org/10.1016/j.resourpol.2023.104195>; Dodik Siswanto, Ranga Handika, and Aria Farah Mita, “The Requirements of Cryptocurrency for Money, an Islamic View,” *Heliyon* 6, no. 1 (2020): e03235, <https://doi.org/https://doi.org/10.1016/j.heliyon.2020.e03235>.

<sup>16</sup> Nadrattuzaman Hosen Amirsyah Tambunan, *Himpunan Intisari Fatwa Dewan Syariah Nasional - Majelis Ulama Indonesia* (Jakarta: DS<sub>n</sub>\_MUI, 2020), 4; Alena Bermes, “Information Overload and Fake News Sharing: A Transactional Stress Perspective Exploring the Mitigating Role of Consumers’ Resilience during COVID-19,” *Journal of Retailing and Consumer Services* 61 (2021): 102555, <https://doi.org/https://doi.org/10.1016/j.jretconser.2021.102555>; Sitara Karim et al., “The Dark Side of Bitcoin: Do Emerging Asian Islamic Markets Help Subdue the Ethical

Recently research by Devi and Adi,<sup>17</sup> stated that advances in digital information technology have also created “virtual spaces” that are formed on social media to become new public spaces. This space has greatly impacted everyday life because everyone can freely express their various activities in that space, which include the practice of economic business transactions. These transactions include transactions with credit cards,<sup>18</sup> electronic money, buying and selling, and loans made online. This practice has evolved to be so widespread in society that it has become mass consumption.

The presence of new patterns in economic transactions of this kind allows for new legal responses.<sup>19</sup> Thus, there is no legal vacuum and uncertainty in society. In this context, the National Shariah Council–Indonesian Ulama Council has responded through its legal views as regards the digital technology products above by issuing fatwa nos. 54, 116,

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Risk?,” *Emerging Markets Review* 54 (2023): 100921, <https://doi.org/https://doi.org/10.1016/j.ememar.2022.100921>; Umer Shahzad, Mahdi Ghaemi Asl, and Marco Tedeschi, “Is There Any Market State-Dependent Contribution from Blockchain-Enabled Solutions to ESG Investments? Evidence from Conventional and Islamic ESG Stocks,” *International Review of Economics & Finance* 86 (2023): 139–54, <https://doi.org/https://doi.org/10.1016/j.iref.2023.03.001>.

<sup>17</sup> Devi dan Adi Ahdiat Rahmawati from Prapanca Research Institute, *Penelitian Sosial Digital: Menelaah Kehidupan Masyarakat Di Era Teknologi Informasi* (Depok: Linea Pustaka, 2014).

<sup>18</sup> Iqbal Kamalludin et al., “Criminal Law Treats for Online Gambling Performers: Investment Fraud Modes,” *Dialogia Iuridica* 14, no. 1 (2022): 26–51; Juan de Lara, “Set the Gaze on Fire’: Gold-Cloth Furnishing and Sacred Propaganda in the Courts of Early Mediaeval Islam,” *Journal of Material Cultures in the Muslim World* 3, no. 2 (2023): 205–34, <https://doi.org/https://doi.org/10.1163/26666286-12340032>; Wen Si et al., “Excessive Enterprise Social Media Usage and Employee Creativity: An Application of the Transactional Theory of Stress and Coping,” *Acta Psychologica* 232 (2023): 103811, <https://doi.org/https://doi.org/10.1016/j.actpsy.2022.103811>.

<sup>19</sup> Chia-Ying Li and Yu-Hui Fang, “The More We Get Together, the More We Can Save? A Transaction Cost Perspective,” *International Journal of Information Management* 62 (2022): 102434, <https://doi.org/https://doi.org/10.1016/j.ijinfomgt.2021.102434>; Imran Yousaf and Larisa Yarovaya, “Spillovers between the Islamic Gold-Backed Cryptocurrencies and Equity Markets during the COVID-19: A Sectorial Analysis,” *Pacific-Basin Finance Journal* 71 (2022): 101705, <https://doi.org/https://doi.org/10.1016/j.pacfin.2021.101705>; Mahdi Ghaemi Asl, Ibrahim D Raheem, and Muhammad Mahdi Rashidi, “Do Stochastic Risks Flow between Industrial and Precious Metals, Islamic Stocks, Green Bonds, Green Stocks, Clean Investments, Major Foreign Exchange Rates, and Bitcoin?,” *Resources Policy* 86 (2023): 104186, <https://doi.org/https://doi.org/10.1016/j.resourpol.2023.104186>.



and 146. Several similar studies investigate the National Shariah Council–Indonesian Ulama Council, for example, Maksu’s Dissertation, which attempts to bring the National Shariah Council–Indonesian Ulama Council fatwa to the global stage, by comparing the National Shariah Council–Indonesian Ulama Council and Malaysian fatwas<sup>20</sup>. Muh Nashirudin and Millatus in their paper analyzed the conformity between the certificate of halal or shariah issued by National Shariah Council–Indonesian Ulama Council on Paytren and the fatwa of National Shariah Council–Indonesian Ulama Council on PLBS<sup>21</sup>. Abdurahman Kasdi, in his research, concluded that National Shariah Council–Indonesian Ulama Council has contributed to developing and implementing shariah values in the economic sector of Indonesia<sup>22</sup>. Neni Sri Imaniyati and Panji Adam applied the National Shariah Council–Indonesian Ulama Council fatwa to shariah banking<sup>23</sup>, as well as the Nunung Radliyah National Shariah Council–Indonesian Ulama Council fatwa, which is employed in resolving

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<sup>20</sup> Muhammad Maksu, “FATWA DEWAN SYARIAH NASIONAL MAJELIS ULAMA INDONESIA DALAM MERESPON PRODUK-PRODUK EKONOMI SYARIAH TAHUN 2000-2011 (Studi Perbandingan Dengan Fatwa Majelis Penasihat Syariah Bank Negara Malaysia)” (SEKOLAH PASCASARJANA UIN SYARIF HIDAYATULLAH JAKARTA, 2013), <https://repository.uinjkt.ac.id/dspace/bitstream/123456789/35928/1/m.maksum-Disertasi.pdf>.

<sup>21</sup> Muh Nashirudin and Millatus Sa’adah, “Reviewing Shariah Certificates of DSN MUI (a Study on Shariah Certificate of DSN MUI on Paytren),” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 19, no. 2 (December 6, 2020): 169–83, <https://doi.org/10.18326/ijtihad.v19i2.169-183>.

<sup>22</sup> Abdurrohman Kasdi, “Contribution of National Shariah Council Fatwa of Indonesian Council of Ulama (DSN-MUI) in The Islamic Economic Development in Indonesia,” *IQTISHADIA* 11, no. 1 (March 7, 2018): 47, <https://doi.org/10.21043/iqtishadia.v11i1.3187>.

<sup>23</sup> Neni Sri Imaniyati and Panji Adam, “The Fatwa Position Of Dsn-Mui In The National Banking System,” *MIMBAR, Jurnal Sosial Dan Pembangunan* 33, no. 1 (December 6, 2017): 142, <https://doi.org/10.29313/mimbar.v33i1.2128>; Wassan Abdullah Alkhowaiter, “Use and Behavioural Intention of M-Payment in GCC Countries: Extending Meta-UTAUT with Trust and Islamic Religiosity,” *Journal of Innovation & Knowledge* 7, no. 4 (2022): 100240, <https://doi.org/https://doi.org/10.1016/j.jik.2022.100240>; Md. Sayeed Al-Zaman, “Social Mediatization of Religion: Islamic Videos on YouTube,” *Heliyon* 8, no. 3 (2022): e09083, <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e09083>.

disputes at the National Shariah Arbitration Board<sup>24</sup>. Meanwhile, Fitriyani Zein spoke about the National Shariah Council–Indonesian Ulama Council fatwa efforts in national legal legislation<sup>25</sup>.

This study discusses the three main schemes. The first is the epistemology (methods) employed by the National Shariah Council–Indonesian Ulama Council in formulating contemporary fatwa-fatwa dictums. The second is the consistency of the use of the legal discovery method in the fatwa of the National Shariah Council–Indonesian Ulama Council. The third is the validity of the fatwa of the National Shariah Council–Indonesian Ulama Council.

## Methods

This normative juridical research used the conceptual and historical *usuliyah* approach. The primary data were the National Shariah Council–Indonesian Ulama Council fatwa. The data of this study included three fatwa (issued) related to the shariah card fatwa, shariah electronic money, and online shop fatwa based on shariah principles. All these are related to the modern transaction model, which in the context of classical fiqh, is categorized as “taboo” or even unthinkable. Additionally, the selection of these themes was based on the reality of the pressures of modernity and global change, especially in the fields of science and information and communication technology.

## Discussion

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<sup>24</sup> Nunung Radliyah, Dewi Nurul Musjtari, and Ro'fah Setyowati, “Fatwa DSN MUI In Managing The Dispute Settlement Of Shariah Economic In Indonesia Through Basyarnas,” *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 3, no. 2 (December 6, 2018): 123–40, <https://doi.org/10.22515/alahkam.v3i2.1346>.

<sup>25</sup> Fitriyani Zein, “Legislation Fatwa National Shariah Board-Indonesian Council of Ulama (DSN-MUI) In the State Economic Policy,” *JURNAL CITA HUKUM* 6, no. 1 (December 6, 2018): 71–94, <https://doi.org/10.15408/jch.v6i1.8267>.



## The Relation of Iftā to Ijtihad: A Methodological Framework

Fatwa discourse is always closely related to *ijtihād* and its instruments. This takes place because the fatwa produced from the “*iftā*” institution is parallel to “*ijtihād*.” *Ijtihād* based on Ayman Shabana is often deemed as a prerequisite for “*iftā*,” which is the main function of the *mufti*<sup>26</sup>. Meanwhile, as part of the genealogy of the clergy carrying the prophetic mission<sup>27</sup>, the *muftī* must have complete mastery over the shariah rules in *naṣṣ* as well as rules in legal reasoning<sup>28</sup>. Based on this understanding, Hallaq said, a mufti cannot be opposed to a *mujtahid*, “the mufti is to be a *mujtahid*”<sup>29</sup>. Here, Hallaq saw that the terms and conditions of a mufti are no different from—not to say the same with—those of a *mujtahid*. However, in the end, he concluded that the conditions for both of them had actually changed. In accordance with that, Ayman Shabana stated that

“The institution of *iftā* has traditionally been associated with the process of *ijtihād*. *Ijtihād* has often been considered a prerequisite for *iftā* which is the main function of a *mujtahid*. A competent *muftī* is a jurist who is able to explain the position of shariah on a given issue based on his own understanding of the sources. He should be able to make a solid argument for his opinion, a process that often involves the evaluation or even the refutation of all other possible opinions. Therefore, the ability of a jurist who did not attain the rank of *ijtihād* to give valid legal opinions remained questionable at best.”<sup>30</sup>

<sup>26</sup> Ayman Shabana, *Custom in Islamic Law and Legal Theory: The Development of the Concepts of 'URF and ADAH in the Islamic Legal Tradition* (New York: PALGRAVE MACMILLAN, 2010), 160.

<sup>27</sup> Hooker, *Indonesian Islam: Social Change Thought Contemporary Fatāwā*, 1–2.

<sup>28</sup> Wael B Hallaq, “Iftā and Ijtihād in Sunni Legal Theory: A Development Account,” in *Islamic Legal Interpretation: Mufti and Their Fatwas*, Muhammad K, 2 (Cambridge: Harvard University Press, 1996), 35.

<sup>29</sup> Hallaq, 35.

<sup>30</sup> Shabana, *Custom in Islamic Law and Legal Theory: The Development of the Concepts of 'URF and ADAH in the Islamic Legal Tradition*, 160.

The above quotation shows that *ijtihād* as a sign of attaining the highest law is often considered a prerequisite in the fatwa (*iftā*) process. Because of this, the preservation of a fatwa is impossible as long as there is no continuity of *ijtihād* in it, which can handle the challenges of the times<sup>31</sup>. Here, *ijtihād/iftā* plays a significant role in the renewal and development of Islamic law<sup>32</sup>. Without *ijtihād*, *fiqh* loses its elan and vitality, hence showing implications for the slumber of mankind<sup>33</sup>.

The word *ijtihād* itself originates from the expression of Muadz b Jabal in the ḥadīs of the Prophet SAW: “*ajtahidu bi al-ra’yi wala alu*,” translated by A.A. Fyzee as “*Then shall I interpret with my reason*”<sup>34</sup>; in this sense, Hallaq stated “*Effort in extracting a rule from the subject matter of revelation while following the principle and procedures established in legal theory*”<sup>35</sup>. Thus, it can be simplified that *ijtihād* is “a creative character (with full sincerity) which functions to seek law when it is not found in the *naṣṣ*<sup>36</sup> with certain procedures and methods.” Here, the significance is why *ijtihād* is always rolled out—despite that there are pros and cons regarding whether or not the *ijtihād* space is closed<sup>37</sup>—because in fact, with this *ijtihād*, the *fiqh* produced will always be fresh, according to the dynamics of space and time.

<sup>31</sup> Abdul Halim Uways, *Fikih StatisDinamis*, Terj. Zark (Bandung: Pustaka Hidayah, 1998), 181.

<sup>32</sup> Muhammad Roy Purwanta, *Dekonstruksi Terori Hukum Islam: Kritis Terhadap Konsep Maslahat Al-Ṭūfī* (Yogyakarta: Kaukaba, 2014), 290.

<sup>33</sup> See: Q.S. al-Hajj, [22]: 78. M Quraish Shihab, *Al-Quran Dan Maknanya* (Lentera Hati, 2020).

<sup>34</sup> Asaf A.A. Fyzee, *Outlines of Muhammadan Law*, 2nd ed. (London: Oxford University, 1955).

<sup>35</sup> Wael B Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnah Usul Al-Fiqh* (Cambridge: Cambridge University Press, 1997), 177.

<sup>36</sup> Afifuddin Muhajir, *Membangun Nalar Moderat (Kajian Metodologis)*, 2nd ed. (Situbondo: Tanwirul Afkar, 2018), 31.

<sup>37</sup> Wael B Hallaq, “Was the Gate of Ijtihad Closed?,” *International Journal of Middle East Studies* 16, no. 1 (March 6, 1984): 3–41, <https://doi.org/10.1017/S0020743800027598>; Wael B Hallaq, *Hal Sudda Bāb Al-Ijtihād?*, Terj. Said (Kairo: Namā libuhus wa al-dirāsāt, 2022); Fazlur Rahman, *Islamic Methodology in History* (Karachi: Central Institute of Islamic Research, 1965); Anver M Emon, “Ijtihad,” in *The Oxford Handbook of Islamic Law*, ed. Anver M Emon and Rume Ahmed (Oxford University Press, 2018), 180–206, <https://academic.oup.com/edited-volume/28121/chapter/212284005>.

Now, the question is, what method is used in the work of *ijtihād* amid new problems in this modern era, which in the turats may have been mentioned but are already out of date, or have they not been mentioned at all? Classical schoolers such as Imam al-Shāfi'ī (150–204 AH) paid great attention to the articulation of these theoretical principles. As a “methodologist” par excellence—although not the sole pioneer of this science<sup>38</sup>—he actually epistemologically has provided a “legacy” in the form of a set of standard criteria that he hopes will be employed as a guide in the operationalization of *ijtihād*, namely, *al-Qur'ān*, *ḥadīs*, *ijmā'*, and *qiyās*<sup>39</sup>. Besides several methods—although they are debatable (*mukhtalaf fih*) among *uṣūl* experts—such as *maslahah mursalah* (detached benefits), *istiḥsān* (viewed as good), *istishāb* (applicability of continuity), *Saḍz ḍarā'i* (preventive action), and *'Urf* (local wisdom)<sup>40</sup>. Nevertheless, they often use these methods in their *ijtihād*. This method can be applied (applied theory) optionally depending on the typology of existing legal problems, especially in cases that are out of the books (apart from *naṣṣ*).

The grand theory (overarching theory), as developed in the modern era *ijtihād*, is patterned into three models. However, that does not mean

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<sup>38</sup> In fact, Imam al-Shāfi'ī was the first to codify his work, but according to Ahmad Hasan he was not the first to formulate this knowledge. Hasan argued his perspective based on two things: first, Abū Yūsuf's criticism of the Syrian fuqahā who were blind to *uṣūl al-fiqh*. According to Hasan, the term used by Abū Yūsuf is clearly a term that denotes a fairly definite concept; secondly, referring to the data provided by Ibn Nadīm (w 385 H), according to the list given by Imam Muḥammad al-Syaibānī (also a student of Abū Ḥanīfah) also has the book of *uṣūl al-fiqh*. See further: Ahmad Hasan, *The Early Development of Islamic Jurisprudence* (Pakistan: Islamic Research Institute, 1988); Wael B Hallaq, “Was Al-Shafii the Master Architect of Islamic Jurisprudence?,” *International Journal of Middle East Studies* 25, no. 4 (1993): 587–605, <http://www.jstor.org/stable/164536>.; Wael B Hallaq, “Uṣūl Al-Fiqh and Shāfi'ī's Risāla Revisited,” *Journal of Arabic and Islamic Studies* 19 (March 25, 2019): 129–83, <https://doi.org/10.5617/jais.7749>.

<sup>39</sup> This method is known as *uṣūl al-fiqh*, Imam al-Shāfi'ī named his work *al-risālat*. Based on this work, he is known as “the queen of Islamic legal jurisprudence” Nyazee, *Theories of Islamic Law the Methodology of Ijtihād*.; this schematic has also been elaborated at length by Kamali, see further: Muhammad Hasyim Kamali, *Principles of Islamic Jurisprudence*, (Cambridge: The Islamic Texts Society, 1991).

<sup>40</sup> The methods in details can be looked up in: Abd. Wahāb Khallāf, *Ilmu Uṣūl Al-Fiqh* (Jakarta: Dar Khutub al-Ilmiyah, 2010); Zahrah, *Uṣūl Al-Fiqh*; Wahbah al-Zuhaili, *Usul Al-Fiqh Al-Islami*, vol. 2 (Damaskus, n.d.).

shifting the method above, as conveyed by Kiai Afifudin Muhajir<sup>41</sup>, Kiai Ma'ruf Amin<sup>42</sup>, Amir Muallim, Muhammad Salām Madkūr, Cholil Nafis<sup>43</sup>, and Muḥammad Ma'rūf al-Dawālībī<sup>44</sup>. The models in question are as follows: (1) *bayānī* (literal semantic), that is, linguistic limitations in interpreting *naṣṣ*<sup>45</sup>, (2) *qiyāsī* (rational), namely, seeking law based on *'illat*<sup>46</sup>, and (3) *istiṣlāḥī* (philosophical), that is, abstracting laws based on *maslahah* search, if not found in the two previous methods<sup>47</sup>.

Of the three methods, *fiqh* can be transformed or contextualized because it is considered out of context. For more convenience, it is shown in the Figure 1 below:

<sup>41</sup> Muhajir, *Membangun Nalar Moderat (Kajian Metodologis)*, 59–91.

<sup>42</sup> Amin, *Fatwa Dalam Sistem Hukum Islam*, 51–56.

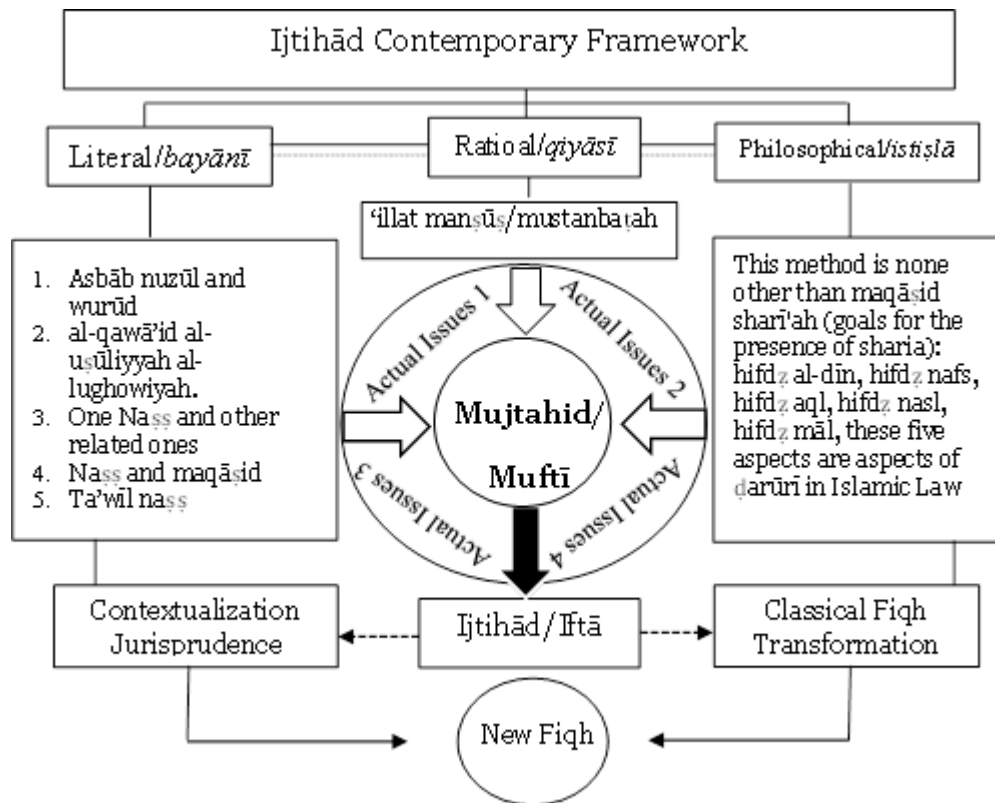
<sup>43</sup> Cholil Nafis, *Teori Hukum Ekonomi Syariah* (Jakarta: UI Press, 2011), 29–51.

<sup>44</sup> Muḥammad Ma'rūf al-Dawālībī, *Al-Madkhal Ilā 'ilmi Ushūl Al-Fiqh* (Damaskus: Jami'at Dimasyq, 1959), 409.

<sup>45</sup> Another term for this method is "Manhāj Istinbāt al-Aḥkām min al-Nuṣūṣ", the method of conducting law from *naṣṣ*. what is meant is in the form of *naṣṣ juz'iy*, *naṣṣ porters*, and *naṣṣ* which are general rules. The steps that can be taken in this method are: 1) study of *asbāb nuzūl* and *wurūd* both macro and micro; 2) studying linguistic rules: *al-qawā'id al-usūliyyah al-lughowiyah*; 3) Integrating *naṣṣ* with other related ones; 4) Integrating *naṣṣ* with *maqāsid sharī'ah*; 5) *Ta'wīlu naṣṣ*. See: Muhajir, *Building Moderate Thoughts (Methodological Study)*. 59-71; Compare to Syamsul Anwar, *Pemikiran Uṣūl Fikih Al-Gazzālī* (Yogyakarta: Suara Muhammadiyah, 2015).

<sup>46</sup> This method is *ijtihād* through the *qiyās* approach, namely, analogical reasoning by comparing two things that principally have something in common. In this case, it has four elements, that is, *al-aṣl*, *al-furū*, *al-ḥukm*, and *al-'illat*. However, the essence of this method is to look for *'illat*, both *manṣūṣ/mustanbaṭah*.

<sup>47</sup>This method is employed when there is no specific argument; in other words, this method can be utilized if rational and literal reasoning cannot be done. This method refers to *maqāsid sharī'ah*, namely, the objectives of the *shariah* that are behind the text (beyond the text) of the *shariah*. In this case, it is the realization of benefit, in which the *uṣūl* scholars agree that there are three categories of targets to be achieved and maintained, namely, *ḍarūrīyat*, *ḥajiyāt*, and *taḥsiniyyat*. The *ḍarūrīyat* category includes *hifdz al-dīn*, *hifdz nafs*, *hifdz aql*, *hifdz nasl*, and *hifdz māl*. See further Syaṭībī, *The Reconciliation of the Fundamentals of Islamic Law*.



**Figure 1.** Ijtihād Contemporary Framework

The work of *ijtihād* as in the scheme above can be explained as follows: initially, the *Mujtahid/mufti* in his *ijtihād/iftā* employs the pattern of the *ijtihād* method with literal, rational, or philosophical structuring depending on the issues at hand. After seeing the issues at hand, the mufti then made a critical identification of these issues, with the use of the third method above. Then, from this step, a legal conclusion is obtained, with regard to the form of transformation of classical fiqh. This step refers to the paradigm of “*al-muhafadhotu 'ala qodimis ṣaliḥ wa al-akhdzu bil jadīdil ashlah.*” Nevertheless, the contextualization of fiqh in finding new laws can also be according to the context, the paradigm used was “*taghayyur al-aḥkām bi taghayyur al-azminah, wa al-amkinah, wa al-aḥwāl wa al-niyāt wa al-awā'id*”<sup>48</sup>.

<sup>48</sup> Jauziyyah, *I'lām Al-Muwāqqi'in an Rāb Alamīn.*

The pattern above appears to be slightly different from the formulation given by Syamsul Anwar. According to him, the scheme that is carried out must be synchronized; the sequence is as follows: (1) method of finding bayānī law; (2) method of finding causation law (*qiyāsī*), containing efficient causa, and causa finalist (*maqāṣid shariah*); 3) and synchronization method (*al-taufiq*)<sup>49</sup>. The structure of these three methods shows the circle of legal discovery, where the process of ijtihad and legal discovery occurs, namely, naṣṣ-realitas/case-*maqāṣid shariah*,<sup>50</sup> the three of which cannot be used optionally but according to the sequence<sup>51</sup>.

The above methods are very relevant as tools in understanding fatwa in the field of shariah economics, especially fatwas of the National Shariah Council, which may in certain cases not be the same as the legal conclusions contained in inheritance classical fiqh books. This occurs because of the discovery of new things that become 'illah (causa) laws that may not have happened in the past.

Before the current prevalence of ijtihad which was carried out collectively (*ijtihād jama'ī*), ijtihād was more often carried out individually (*ijtihād fardy*). Aznan Hasan indicated that the second model of ijtihad is a new method formulated by contemporary scholars in response to the development of modern issues. However, in his conclusion, Aznan said that there is no standard definition yet to be offered but rather a loose definition. He said that “the agreement of the majority of jurists on any matter” (the agreement of the majority of jurists on any matter) <sup>52</sup>.

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<sup>49</sup> Syamsul Anwar, *Studi Hukum Islam Kontemporer Bagian Dua* (Yogyakarta: UAD Pess, 2019).

<sup>50</sup> Iqbal Kamalludin and B. N. Arief, “Kebijakan Reformasi Maqāshid Al-Syarīah Dan Kontribusinya Dalam Formulasi Alternatif Keringanan Pidana Penjara,” *Al-'Adalah* 15, no. 1 (2019): 181–218, <https://doi.org/http://dx.doi.org/10.24042/adalah.v%vi%i.2931>.

<sup>51</sup> Anwar, *Studi Hukum Islam Kontemporer Bagian Dua*, 190.

<sup>52</sup> Aznan Hasan, “An Introduction to Collective Ijtihād (Ijtihād Jamā'ī): Concept and Applications,” *American Journal of Islamic Social Sciences* 20 (n.d.).



Conversely, Syarafi gave this understanding as “an optimal effort by the majority of Muslim jurists in seeking legal answers by exchanging ideas”<sup>53</sup>.

In terms of the contemporary *ijtihād* model above, fatwa can also be produced via an individual model (*fardy*), or it can also be carried out in an institutional–collective manner (*jamā’ī*) that has fulfilled certain capabilities<sup>54</sup>. Thus, the process is said that giving a fatwa (*iftā*) is also a *muftī*’s creative work with a method that is similar to *ijtihād*. Nonetheless, the message of K.H. Ma’ruf Amin in the process of determining the law implied that the *muftī* must not be careless (*tafrithi*) and go too far (*ifrathi*)<sup>55</sup>. A *mufti*<sup>56</sup> should have mastered the characteristics and methodology described above.

Some of the examples of individual fatwas were those issued by the Prophet Muhammad himself and his companions after the Prophet’s death. Fatwas after the Prophet died were categorized into three types: (1) companions who gave lots of fatwas, (2) friends who do not have many fatwas, and (3) a friend who has a little fatwa (*mufti darūrī*)<sup>57</sup>. We can also find individual fatwas in the modern era, for example, in the fatwas of Ibn Taimiyah<sup>58</sup>, Shaykh M. Syaltut, Yūsuf al-Qardāwī, Shaykh al-Maraghi, Muhammad Abduh, Muhammad Abu Zahrah, and Said Rasyid Ridha; in

<sup>53</sup> Abdul Majid Asy-Syarafi, *Al-Ijtihād Al-Jamā’ī Fī Al-Tasyrī’ Al-Islāmī* (Qatar: Wizarah al-Auqaf wa Asy-Su’un al-Islamiyah, 1998); Ṣalāh Ibn, *Adab Al-Muftī Wa Al-Mustaftī*, vol. 1 (Beirūt: Maktabah al-Ilm wa al-Hukm, 1407), 21–35.

<sup>54</sup> Ibn Ṣalāh refers to collective fatwas with *muftis* “ghoir *mustaqil*” with the provisions: (1) the *muftī* must have the same capacity as the *mujtahid mustaqil*, (2) the *mufti* may not master more than one school of *fiqh*, (3) the *mufti* must know the arguments of the school of thought (point 2) and its legal conclusions, and (4) the *mufti* must understand *fiqh* material and its *istidlal* methodology. Ibn, *Adab Al-Muftī Wa Al-Mustaftī*, 1:28–35.

<sup>55</sup> Amin, *Fatwa Dalam Sistem Hukum Islam*, 283–84.

<sup>56</sup> Joseph Schacht states that “a *mufti* is a specialist on law who can give an authoritative opinion on point of doctrine; his considered legal opinion is called *fatwa*” Joseph Schacht, *An Introduction to Islamic Law*, (London: Oxford Press, 1971), 28.

<sup>57</sup> Ṭāhā Jābir al- Alwānī, *Source Methodology in Islamic Jurisprudence (Usul Al-Fiqh Al-Islami)*, 3rd ed. (London: The International Institute of Islamic Thought, 2003), 11–20; Ali Jum’ah, *Sejarah Ushul Fikih: Histori Ilmu Ushul Fikih Dari Masa Nabi Hingga Sekarang*, Terj. Adī (Depok: Keira Publishing, 2017), 16–20.

<sup>58</sup> The Fatwas are then compiled into 37 volumes to response the *fiqh* of Ibn Taimiyyah, *Majmū’ Fatāwā Ibn Taimiyyah* (t.tp: Dar Al-Kotob al-Ilmiyah, n.d.).

Indonesia, there used to be Kyai Sahal Mahfudz<sup>59</sup>, M. Quraish Shihab<sup>60</sup>, and so forth.

Meanwhile, collective fatwa (*jamā'ī*) can be traced via fatwa institutions: Egypt (*Majma' al-Buhuth dan al-Majlis al-A'la li al-Shu'un al-Islamiyah al-Fiqhiyah*); Arab Saudi: (*Hay'at Kibar al-'Ulama' fi al-Mamlakat al-Arabiyat al-Sa'udiyah, al-Lajnat al-Da'imah li al-Buhuth al-'Ilmiyah wa al-Ifta'*); Kuwait: (*Hay'at al-Fatwa wa al-Riqabat al-Shar'iyah fi Bayt al-Tamwil al-Kuwayti*); Sudan: (*Majlis al-Ifta' al-Shar'i fi al-Sudan, dan al-Hay'at al-'Ulya al-Shar'iyah li al-Jihaz al-Masrafi wa al-Mu'assasat al-Maliyah fi Sudan*); Pakistan: (*Majlis al-Fikr al-Islami bi Bakistan*)<sup>61</sup>. Amerika: (*"The Society for Adherence to the Sunnah"*)<sup>62</sup>; Indonesia (NU's Bahtsul Masail Institute, Majelis Tarjih and Muhammadiyah Tajdid, Persis Hisbah Council, Indonesian Ulama Council<sup>63</sup>, and National Shariah Council–Indonesian Ulama Council, which specifically provide fatwa on shariah economic law).

Several factors allegedly caused the shift in the pattern of *ijtihad* from the individual to the collective. First is the development of modernization in all aspects of life; individual opinions are not sufficient enough to resolve contemporary problems. Second is the development of specialization of science; now, the division of knowledge is more specific, unlike in the past when science was encyclopedic in nature, various experts

<sup>59</sup> Sahal Mahfudz, *Nuansa Fiqih Sosial*, Cet. ke-VI (Yogyakarta: LkiS, 2007).

<sup>60</sup> Quraish Shihab M., *M. Quraish Shihab Menjawab 1001 Soal Keislaman Yang Patut Anda Ketahui*, IX (Jakarta: Lentera Hati, 2010).

<sup>61</sup> Hasan, "An Introduction to Collective *Ijtihād* (*Ijtihād Jamā'ī*): Concept and Applications," 38–39.

<sup>62</sup> Muhamad Abduh, "KHALED M. ABOU EL FADL: Menuju Pembacaan Otoritatif Atas Hadis Nabi Melalui Hermeneutika Negosiatif," *Tahdis: Jurnal Kajian Ilmu Al-Hadis* 12, no. 2 (March 6, 2022), <https://doi.org/10.24252/tahdis.v12i2.21105>.

<sup>63</sup> Heri Fadli Wahyudi and Fajar Fajar, "Metode *Ijtihad* Komisi Fatwa Majelis Ulama Indonesia Dan Aplikasinya Dalam Fatwa," *Cakrawala: Jurnal Studi Islam* 13, no. 2 (March 6, 2018): 120–33, <https://doi.org/10.31603/cakrawala.v13i2.2402>.

are required to participate in discovering new laws<sup>64</sup>. Third are differences and controversial fatwas among Muslims<sup>65</sup>.

From the description above, simply, the conception of fatwa produced by the mufti through the “*iftā*” process is the same as the work of *ijtihād* as a fiqh production machine. The references employed in determining the legal dictum used by both are the same, that is, based on shariah arguments. The shariah propositions are both those that are *muttafaq ‘alaih* (agreed on) and those that are *muktalaf fiha* (debatable), which are accommodated in three major frameworks. The big framework is literal semantic (*bayānī*), rational (*qiyāsī*), and philosophical (*istiṣlāhī*). With this method, we can conclude that there is a relationship between the two whose outputs are both legal products (fiqh) issued by the muftī/mujtahid. In contemporary times such as now, the pattern of *ijtihād* work tends to shift from “*fardy*” to “*jamā’ī*” allegedly because of the complexity of the problems that arise, besides the polarization of knowledge.

### **Fatwa of National Shariah Council–Indonesian Ulama Council: Procedures and Legal Implications**

The National Shariah Council–Indonesian Ulama Council fatwa spearheads the legal status of institutions engaged in the shariah economy. All institutions refer to the decision of the fatwa institution. Before the emergence of the National Shariah Council–Indonesian Ulama Council fatwa, Islamic financial institutions, which began operating in 1992 under the term “bank with a profit sharing system<sup>66</sup>,” which later became “Bank Muamalat Indonesia” did not yet have a solid foundation of Islamic law as a “universal” reference regarding shariah-based products. Meanwhile, if

<sup>64</sup> Amin, *Fatwa Dalam Sistem Hukum Islam*.

<sup>65</sup> Abdul Wahid Haddade, *Ijtihad Kolektif: Pertautan Antara Keniscayaan Dan Kewajiban Agama* (Makasar: Alaudin University Press, 2012), viii.

<sup>66</sup> Political policy in Indonesia provided support for the first time with the legislation of Law 7 1992 concerning Banking, the term bank with a “profit sharing system” is stated in article 6 of the Law.

the law does not have references (it is feared), it will only cause chaos (chaos) because each person/institution will provide an interpretation based on their interests<sup>67</sup>. On the basis of this awareness, then together with the Indonesian Ulama Council workshop on shariah mutual funds in 1997, one of the recommendations was the establishment of the National Shariah Council, which finally was de jure ratified on February 10, 1999<sup>68</sup>.

In accordance with its formation, the main domain of the National Shariah Council–Indonesian Ulama Council is its fatwa related to the shariah economy, as stated in the general provisions of Article 1 of the AD-ART: “The National Shariah Council–Indonesian Ulama Council, hereinafter abbreviated as National Shariah Council–Indonesian Ulama Council, is the Indonesian Ulama Council’s task in establishing fatwa and supervising its implementation in order to grow and develop business in the fields of finance, business, and the shariah economy in Indonesia”<sup>69</sup>. It has been proven that until now, as stated on the <https://dsnemui.or.id/page>, the National Shariah Council–Indonesian Ulama Council has consistently issued shariah economic fatwa. The National Shariah Council–Indonesian Ulama Council fatwa, since it was first issued in 2000 to date, has issued a fatwa totaling 152 points, the contents of which vary widely, ranging from shariah finance, shariah business, digital money,<sup>70</sup>

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<sup>67</sup> Abd Salam, “Natara Keabsolutan Nash Qat’i Dan Tuntutan Keadilan Dalam, Dalam Menggugat Stagnasi Pembaruan Hukum Islam Di Indonesia,” M. Sutono (Yogyakarta: UII Press, 2016), 192.

<sup>68</sup> Faizi, “REKONSTRUKSI FATWA DSN-MUI PADA PENGEMBANGAN INDUSTRI PERBANKAN SYARIAH DI INDONESIA,” *An Nûr: Jurnal Studi Islam* IV, no. 1 (2012): 67–88, <https://jurnalannur.ac.id/index.php/An-Nur/article/view/12>.

<sup>69</sup> Hosen Amirsyah Tambunan, *Himpunan Intisari Fatwa Dewan Syariah Nasional - Majelis Ulama Indonesia*, 4.

<sup>70</sup> Rahmatina Awaliah Kasri et al., “Digital Payment and Banking Stability in Emerging Economy with Dual Banking System,” *Heliyon* 8, no. 11 (2022): e11198, <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e11198>; Muneer M Alshater et al., “Fintech in Islamic Finance Literature: A Review,” *Heliyon* 8, no. 9 (2022): e10385, <https://doi.org/https://doi.org/10.1016/j.heliyon.2022.e10385>; Ali Haruna et al., “Can Islamic Finance Enhance the Innovation Capacity of Cameroonian SMEs? Empirical Evidence Based on a Multivariate Probit Approach,” *Borsa Istanbul Review*, 2023, <https://doi.org/https://doi.org/10.1016/j.bir.2023.11.006>; Xin Zhao et al., “Interoperability of the Revolutionary Blockchain Architectures and Islamic and Conventional Technology Markets: Case of Metaverse, HPB, and Bloknet,” *The Quarterly*

online transactions, and so forth<sup>71</sup>. Seeing the fatwa that has been issued by this institution, it can be said that the National Shariah Council–Indonesian Ulama Council is productive.

The fatwas issued by the National Shariah Council–Indonesian Ulama Council are based on the objective that all operations of shariah financial institutions/businesses are per shariah principles<sup>72</sup>. Thus, when examined more deeply, the fatwas stipulated by the National Shariah Council–Indonesian Ulama Council are generally a response to economic conditions in Indonesia. Based on K.H. Ma'ruf Amin, the issuance of the National Shariah Council–Indonesian Ulama Council fatwa was none other than a response to (1) the idea of the regulator, (2) the idea of business actors, (3) the idea of the Shariah Supervisory Board, and (4) the internal idea of National Shariah Council–Indonesian Ulama Council itself<sup>73</sup>. According to the concept of fatwa in oriented fiqh—which is more passive—the National Shariah Council–Indonesian Ulama Council fatwa is based on the submissions from the three institutions above and of course on the creativity of the National Shariah Council–Indonesian Ulama Council itself, which is mentioned in the last position. From a position such as this, it can be concluded that the National Shariah Council–Indonesian Ulama Council tends to be passive because it only waits for people/institutions to come over to submit legal complaints to it. Quraish Shihab assessed that this passive National Shariah Council–Indonesian Ulama Council system/viewpoint must be changed. According to him, a fatwa must be responsive to the times; even if it is progressive, its stipulation should not just wait<sup>74</sup>.

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*Review of Economics and Finance* 92 (2023): 112–31,  
<https://doi.org/https://doi.org/10.1016/j.qref.2023.09.001>.

<sup>71</sup> Hosen. Telusuri lebih lanjut: <https://dsnemui.or.id/kategori/fatwa/page/10/>

<sup>72</sup> Juhaya S Pradja, *Ekonomi Syariah* (Bandung: Pustaka Setia, 2012), 207.

<sup>73</sup> Nafis, *Teori Hukum Ekonomi Syariah*, ix.

<sup>74</sup> Quraish Shihab M., *Era Baru, Fatwa Baru, Dalam MB. Hooker, Islam Mazhab Indonesia: Fatwa-Fatwa Dan Perubahan Sosial*, 17.

On the basis of the above statements, the National Shariah Council–Indonesian Ulama Council has a very important and strategic role in developing and implementing shariah values in the economic field. This is shown in its position as a pioneer of socialization, internalization, and triggering of shariah economic growth in Indonesia<sup>75</sup>. Amid the great contribution of the National Shariah Council–Indonesian Ulama Council, there is also criticism of this institution; according to Helmi, a community paradigm was found that is actually counterproductive to the succession of the grounding of the shariah economic system. The reason is, first, the shariah economic system tends to make the economic system stagnant and not dynamic<sup>76</sup>. This is because the National Shariah Council–Indonesian Ulama Council tends to wait for questions from *mustaftis*<sup>77</sup> rather than to use the internal ideas of the National Shariah Council–Indonesian Ulama Council in issuing fatwas.

Second, the fatwa issued by the National Shariah Council–Indonesian Ulama Council is mostly produced through external “orders” (related institutions). In his research, Nafis said that this kind of phenomenon (could) reduce the independence of the National Shariah Council–Indonesian Ulama Council. The purported dependency of the National Shariah Council–Indonesian Ulama Council is presumably due to the fact that every time the National Shariah Council issues a fatwa, it is invariably accompanied by economic practitioners and regulators. The National Shariah Council–Indonesian Ulama Council should always request and obtain thorough information and data from the party requesting a fatwa on a proposed issue. The fatwa requester and fatwa executor were not present during the plenary deliberation to determine the fatwa, hence the

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<sup>75</sup> Kasdi, “Contribution of National Shariah Council Fatwa of Indonesian Council of Ulama (DSN-MUI) in The Islamic Economic Development in Indonesia.”

<sup>76</sup> Rahman Helmi, “MANHAJ PENETAPAN FATWA HUKUM EKONOMI SYARIAH DI INDONESIA,” *Syariah Jurnal Hukum Dan Pemikiran* 18, no. 2 (March 7, 2018): 301, <https://doi.org/10.18592/sy.v18i2.2518>.

<sup>77</sup> Panji Adam, *Fatwa-Fatwa Ekonomi Syariah*, 2nd ed. (Jakarta: Amzah, 2019), 168.



National Shariah Council–Indonesian Ulama Council was free of the *mustafti* influence at the time of determining the fatwa<sup>78</sup>.

Meanwhile, the flow of determining the National Shariah Council–Indonesian Ulama Council fatwa is that first, General Assembly of National Shariah Council–Indonesian Ulama Council accepts legal proposals or inquiries concerning a product of a shariah financial institution. Second, General Assembly of National Shariah Council–Indonesian Ulama Council assigned the related working group to conduct the discussion and formulation of the draft fatwa. Third, General Assembly of National Shariah Council–Indonesian Ulama Council makes a special memorandum that contains a review and discussion of a question or legal proposal. Fourth, the General Assembly of National Shariah Council–Indonesian Ulama Council will then bring the results of the discussion to the National Shariah Council–Indonesian Ulama Council Plenary Meeting for approval. The memorandum that was approved during the National Shariah Council–Indonesian Ulama Council Plenary Meeting is determined to become the National Shariah Council–Indonesian Ulama Council fatwa. The fatwa was signed by the chairman of the National Shariah Council–Indonesian Ulama Council (ex officio General Chair of the National Shariah Council) and the Secretary of the National Shariah Council–Indonesian Ulama Council (ex officio General Secretary of the National Shariah Council)<sup>79</sup>.

Moreover, the National Shariah Council has the following working mechanisms: First, the draft fatwa proposed by the General Assembly of National Shariah Council should be ratified. Second, plenary meetings in 3 months must be held at least once. However, if necessary, the National Shariah Council in the third stage makes a statement contained in the

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<sup>78</sup> Nafis, *Teori Hukum Ekonomi Syariah*, 95.

<sup>79</sup> Ma'ruf Amin, *Solusi Hukum Islam (Makharij Fiqhiyyah) Sebagai Pendorong Arus Baru Ekonomi Syariah Di Indonesia: Kontribusi Fatwa DSN-MUI Dalam Peraturan Perundang-Undangan RI*, Makalah Pe (Malang: Universitas Islam Negeri Maulana Malik Ibrahim, 2017), 15.

annual report that the relevant shariah financial institution has/did not comply with all shariah provisions in accordance with the *fatwa* issued by the National Shariah Council.

In this context, concerning the *fatwa* dictum produced, Alexandre Caeiro and Soleh Hasan Wahid said that *fatwa* is a point where legal theory and social practice meet<sup>80</sup>. In Barlinti's study, Atho Mudzhar said that the implications of this National Shariah Council–Indonesian Ulama Council fatwa can be categorized into four aspects. First, the Fatwa is a guideline for the principles of Islamic economics for Muslim society generally. The increase in the number of shariah banks and other financial institutions in the last decade indicates the influence of the National Shariah Council fatwa in providing guidelines for the principles of Islamic economics for the management of these institutions<sup>81</sup>.

Second, the Fatwa is a guideline for members of the Shariah Supervisory Board to ensure compliance with shariah principles. To ensure that the National Shariah Council fatwa functions as a guideline for Shariah Supervisory Board members, the following four things can be seen: (1) the recruitment of administrators and shariah financial institutions must have a National Shariah Council–Indonesian Ulama Council recommendation; (2) Shariah Supervisory member candidates must have a training certificate from National Shariah Council–Indonesian Ulama Council; (3) there is a report on the progress of Shariah Supervisory performance every semester; and (4) Shariah Supervisory members are invited to an annual meeting held by the National Shariah Council–Indonesian Ulama Council to update the latest fatwa.

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<sup>80</sup> Soleh Hasan Wahid, "POLA TRANSFORMASI FATWA EKONOMI SYARIAH DSN-MUI DALAM PERATURAN PERUNDANG-UNDANGAN DI INDONESIA," *Ahkam: Jurnal Hukum Islam* 4, no. 2 (February 23, 2016): 176–77, <https://doi.org/10.21274/ahkam.2016.4.2.171-198>.

<sup>81</sup> M Atho Mudzhar, "The Legal Reasoning and Socio-Legal Impact of the Fatwās of the Council of Indonesian Ulama on Economic Issues," *AHKAM: Jurnal Ilmu Syariah* 13, no. 1 (March 27, 2013): 16, <https://doi.org/10.15408/ajis.v13i1.946>.

Third, guidelines for the management of Islamic financial institutions to ensure that their products and services comply with Islamic principles. Fourth, there is a National Shariah Council–Indonesian Ulama Council fatwa receiver in government laws and regulations<sup>82</sup>, for example, in Law No. 19 of 2008 concerning State Shariah Securities, including National Shariah Council–Indonesian Ulama Council fatwa material Nos. 69 and 70<sup>83</sup>. Similarly, in Law 21 2008 Concerning Shariah Banking, the phrase “bank (operating) based on shariah principles” is subsequently changed to “shariah banking” and the term “shariah principles” is defined as “Islamic legal principles regarding banking activities based on the fatwa issued by an institution authorized to issue fatwa shariah.” Furthermore, in Article 26 of Law 21 2008, it can be said that the institution authorized to issue fatwas is the Indonesian Ulama Council, of which the National Shariah Council is a part<sup>84</sup>.

Similarly, the Shariah Economic Law Compilation absorbs fatwa in several subchapters (see Table 1).

**Table 1.** Absorption Fatwa of Shariah Economic Law Compilation

No. of Fatwa	Fatwa materials	Absorption Fatwa	Subchapter
08 of 2000	Financing of Musyarokah	Cooperative contract (Syirkah)	129 - 40
09 of 2000	Financing of Ijarah	Chapter X Rent	247 - 287
10 of 2000	Wakalah	Chapter XII Wakalah (Endorser)	483 - 557
11 of 2000	Kafalah	Displacement (Kafalah)	293 - 330
12 of 2000	Hawalah	Debt Transfer (Hawalah)	331 - 342
21 of 2001	Insurance General	Insurance	558 - 608
39 of 2002	Guidelines Shariah, Haj Insurance		Haj Insurance 607 - 608

<sup>82</sup> Mudzhar, 16.

<sup>83</sup> Dewan Syari'ah Nasional Nomor 69/DSN-MUI/VI/2008 Tentang Surat Berharga Syariah Negara; dan Fatwa MUI No. 70/DSN-MUI/VI/2008 tentang Metode Penerbitan Surat Berharga Negara.

<sup>84</sup> Mudzhar, “The Legal Reasoning and Socio-Legal Impact of the Fatwās of the Council of Indonesian Ulama on Economic Issues,” 17.

*Source:* Juhaya S. Praja.<sup>85</sup>

Based on the Table 1, it appears that the fatwas issued by the National Shariah Council–Indonesian Ulama Council have no small influence, both for institutions and government regulations. Research by the Media Indonesia Research and Development Agency concerning the public's response to the fatwa against bank interest in 2003 showed that the National Shariah Council–Indonesian Ulama Council fatwa had a significant effect on people's lives. Of the 3,294 respondents who were enrolled as the survey model research sample, 1798, which is equivalent to 54,586 votes, felt determined to follow the fatwa. They are ready to move accounts from conventional banks to shariah banks (which are usury-free). The remaining 45.42% or 1,496 respondents were not affected by the fatwa. Although this survey does not represent all Indonesian Muslims, at least, the survey results provide an initial picture of the influence of fatwa in changing the behavior of Muslims in Indonesia<sup>86</sup>.

This research shows two important things. First, the National Shariah Council–Indonesian Ulama Council fatwa has enormous meaning in Indonesian society, especially Muslims. The reality thus far shows that although the National Shariah Council–Indonesian Ulama Council fatwa is not legally binding, in practice, it is often employed as a reference for behavior by society and the government in all aspects of life. Shariah economic fatwa is a “mandatory” reference for economic, financial, and banking actors. Second, because it has such strong social influence, the National Shariah Council–Indonesian Ulama Council must be responsive to the dynamics and tendencies of society so that the fatwa issued is in accordance with their interests.

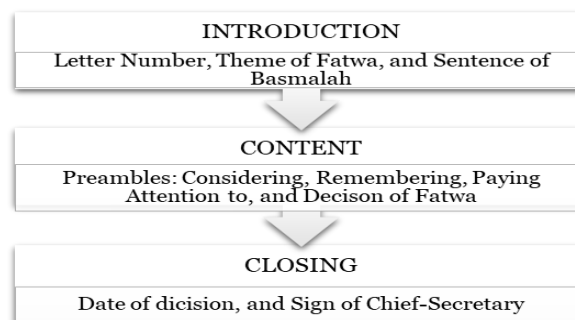
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<sup>85</sup> Jordan Hotman Ekklesia Sitorus, “Pancasila-Based Social Responsibility Accounting,” *Procedia—Social and Behavioral Sciences* 219 (2016): 700–709, <https://doi.org/10.1016/j.sbspro.2016.05.054>.

<sup>86</sup> Amin, *Fatwa Dalam Sistem Hukum Islam*, v–vi.

## The Consistency of Fatwas Construction

Fatwa in this modern era is viewed as a guide in explaining the provisions of Islamic law relating to the living conditions of Muslims<sup>87</sup>, especially in the economic field (Islamic economic law). In his efforts to explain these laws, the mufti will use the *ijtihad* method in addition to looking at reality, so that the resulting fatwa is not atomic, that is, far from reality (less empirical). In terms of the mechanism, Syamsul Anwar said that the answers given by the mufti were usually delivered in written form, although not infrequently in oral form<sup>88</sup>. Nonetheless, the fatwa format is not always in the form of a question and answer, but some are in the form of letters<sup>89</sup>. In this case, for example, a fatwa issued by the National Shariah Council–Indonesian Ulama Council is submitted in writing in a standard format. The format is shown (see Figure 2) :



**Figure 2** Writing Standard Format of Fatwa

The Figure 2 shows that the National Shariah Council–Indonesian Ulama Council fatwa in the opening/introductory section begins with a number followed by the title and *Basmalah* Sentence; then, the content section contains preambles—Considering, Remembering, Paying Attention to—which underlies the fatwa, including what argument become the

<sup>87</sup> Wahyudi and Fajar, “Metode Ijtihad Komisi Fatwa Majelis Ulama Indonesia Dan Aplikasinya Dalam Fatwa,” 123.

<sup>88</sup> Anwar, *Studi Hukum Islam Kontemporer Bagian Dua*, 37.

<sup>89</sup> Anwar, 37.

argument, followed by an amar fatwa, which is a religious view on the matter being fatwan. In the concluding remarks are the response of the stipulation and the signature of the giver of the fatwa, in this case, the Chairperson of the Indonesian Ulama Council and the Secretary.

Such a fatwa format is actually a form of Islamic legal support for the development of the shariah industry in this country. National Shariah Council–Indonesian Ulama Council has issued more and more fatwas on shariah economics and finance in Indonesia. Actually, almost 152 fatwas with various types of economic activities have been circulated in the community. Thus, in this description, as mentioned above, how the methodical construction of legal findings in the National Shariah Council–Indonesian Ulama Council fatwas is specifically emphasized. The method of testing is by looking at the line of legal argument, both textual *naqliyyah* and ratio *aqliyah* arguments in the sampled fatwas, as follows.

This fatwa shariah card with NO: 54/DSN-MUI/X/2006 was at the request of the shariah financial institutions including Bank Danamon, Bank Negara Indonesia (BNI), and Hong Kong and Shanghai Banking Corporation (HSBC) Shariah. Similar to a fatwa in general, this fatwa is issued in written form. Starting from the letter number to the theme of the fatwa and then bismillah. The content section starts with the “considering” preamble, followed by the “remembering” preamble, quoting 11 verses of the Al-Qur'an<sup>90</sup> and quoting 13 hadis<sup>91</sup> and 5 fiqh principles<sup>92</sup>.

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<sup>90</sup> The related verses are: QS. al-Ma'idah [5]: 1, QS. al-Isra' [17]: 34, QS. Yusuf [12]: 72, QS. al-Ma'idah [5]: 2, QS. al-Furqan [25]: 67, QS. al-Isra' [17]: 26-27, QS. al-Qashash [28]: 26, QS. al-Baqarah [2]: 275, QS. al-Nisa' [4]: 29, QS. al-Baqarah [2]: 282, QS. al-Baqarah [2]: 280.

<sup>91</sup> Ḥadīth narrated by Imam al-Tirmidzi, Imam Ibnu Majah, Imam Bukhari, Abu Daud, Ahmad, Abu Dawud, dan Ad-Daruquthni, 'Abd ar-Razzaq, Muslim, riwayat Jama'ah, Nasa'i, Abu Daud, Ibn Majah, dan Ahmad, Bukhari.

<sup>92</sup> These orders include the following: (1) Basically, all forms of muamalah are permissible unless there is an argument that forbids them. (2) Difficulties can attract ease. (3) There is a need to be able to occupy an emergency position. (4) Something that applies based on custom is the same as something that applies based on syara' (as long as it does not conflict with shariah). (5) Avoiding damage (loss) must take precedence (priority) over bringing benefit.



In preamble “pays attention,” (1) quotes the opinion of the *fuqaha*;<sup>93</sup> (2) the Decision of *Hai'ah al-Muhasabah wa al-Muraja'ah li-al-Mu'assasah al-Maliyah al-Islamiyah*, Bahrain, *al-Ma'ayir al-Syar'iyah* May 2004: *al-Mi'yar al -Syar'i*, number 2 about *Bithaqah al-Hasm wa Bithaqah al-I'timan*; (3) National Shariah Council–Indonesian Ulama Council fatwas<sup>94</sup>; (4) Fatwa requests regarding credit cards that comply with shariah principles from shariah banks, including from: Bank Danamon, BNI, and HSBC Shariah; (5) results of the National Shariah Council–Indonesian Ulama Council Workshop in collaboration with DPbS-BI and Bank Danamon Shariah, which was also attended by several Shariah banks, in Ciawi Bogor, in May 2005; (6) opinion of the Plenary Meeting on Wednesday, 18 Ramadhan 1,427 H/October 1, 2006.

In the preamble to “decide” or injunction, in this case, the National Shariah Council–Indonesian Ulama Council, there are seven stipulations: (1) general provisions, containing the general understanding of the parties related to the shariah card; (2) law, namely, National Shariah Council–Indonesian Ulama Council decides that the law of shariah card is permissible, with the conditions set out in this fatwa; (3) the provisions of the contract, which are used in shariah credit cards are *kafalah*, *qard*, and *ijārah* contracts; (4) provisions regarding limits (*Dhawabith wa Hudud*) shariah card; (5) terms of fees; (6) provisions of *Ta'widh* and Fines; and (7) closing provisions.

Another contemporary fatwa in the digital field is about electronic money (e-money).<sup>95</sup> Broadly, e-money stores value in a technological

<sup>93</sup> Imam al-Dimyathi, Khatib Syarbaini, As-Syirazi, Sayyid Sabiq, Mushthafa 'Abdullah al-Hamsyari sebagaimana dikutip oleh Syaikh 'Athiyah Shaqr.

<sup>94</sup> Five fatwas DSN-MUI: (a). Fatwa DSN No. 9/DSN-MUI/IV/2000 Concerning *Ijarah*; (b). Fatwa DSN No.11/DSN-MUI/IV/2000 concerning *Kafalah*; (c). Fatwa DSN No.17/DSN-MUI/IX/2000 regarding Sanctions for Capable Customers who Delay Payments; (d). Fatwa DSN No.19/DSN-MUI/IV/2001 regarding *Qardh*; (e). Fatwa DSN No.43/DSN-MUI/VIII/2004 regarding *Ta'widh*.

<sup>95</sup> Massimiliano Vatiero, “Smart Contracts vs Incomplete Contracts: A Transaction Cost Economics Viewpoint,” *Computer Law & Security Review* 46 (2022): 105710, <https://doi.org/https://doi.org/10.1016/j.clsr.2022.105710>; Ziliang Deng et al., “Rapid

device that can be widely utilized to make payments for businesses and purposes that do not need to involve a bank account in every transaction<sup>96</sup> but can be used as a means of payment<sup>97</sup>; e-money appears to be becoming more popular among the general public. Hence, a fatwa is required to see how far this contemporary product can be used in a *syar'i* way. The fatwa begins with the letter number, which is followed by the theme “National Shariah Council–Indonesian Ulama Council No: 116/DSN-MUI/IX/20I7 Concerning Shariah Electronic Money” followed by *basmalah*.

The first preamble is “considers,” and the second is “remembers” by quoting nine verses of the Qur'an<sup>98</sup> and quoting eight hadis<sup>99</sup>, as well as eight principles of fiqh<sup>100</sup>. The preamble is “pays attention,” (1) citing the

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Internationalization and Exit of Exporters: The Role of Digital Platforms,” *International Business Review* 31, no. 1 (2022): 101896, <https://doi.org/https://doi.org/10.1016/j.ibusrev.2021.101896>; Nandan Gowda and Chandrani Chakravorty, “Comparative Study on Cryptocurrency Transaction and Banking Transaction,” *Global Transitions Proceedings* 2, no. 2 (2021): 530–34, <https://doi.org/https://doi.org/10.1016/j.gltp.2021.08.064>.

<sup>96</sup> Becatien H Yao et al., “Mobile Money, Transaction Costs, and Market Participation: Evidence from Côte d'Ivoire and Tanzania,” *Food Policy* 112 (2022): 102370, <https://doi.org/https://doi.org/10.1016/j.foodpol.2022.102370>; Hector D Perez et al., “A Digital Twin Framework for Business Transactional Processes in Supply Chains,” in *31 European Symposium on Computer Aided Process Engineering*, ed. Metin Turkey and Rafiqul B T - Computer Aided Chemical Engineering Gani, vol. 50 (Elsevier, 2021), 1755–60, <https://doi.org/https://doi.org/10.1016/B978-0-323-88506-5.50272-2>; Hector D Perez et al., “Optimization of Business Transactional Processes in a Digital Supply Chain,” in *30 European Symposium on Computer Aided Process Engineering*, ed. Sauro Pierucci et al., vol. 48 (Elsevier, 2020), 1159–64, <https://doi.org/https://doi.org/10.1016/B978-0-12-823377-1.50194-4>; Yusaf H Akbar and Andrea Tracogna, “The Digital Economy and the Growth Dynamics of Sharing Platforms: A Transaction Cost Economics Assessment,” *Journal of Digital Economy* 1, no. 3 (2022): 209–26, <https://doi.org/https://doi.org/10.1016/j.jdec.2023.01.002>.

<sup>97</sup> European Central Bank, *Report On Electronic Money* (Frankfurt: European Central Bank, 1998), 7.

QS. al-Baqarah [2]: 275, QS. al-Nisa' [4]: 29, QS. al-Baqarah [2]: 282, QS. al-Baqarah [2]: 280.

<sup>99</sup> Hadith narrated by Imam al-Tirmidzi, Imam Ibnu Majah, Imam Bukhari, Abu Daud, Ahmad, Abu Dawud, dan Ad-Daruquthni, 'Abd ar-Razzaq, Muslim, riwayat Jama'ah, Nasa'i, Abu Daud, Ibn Majah, dan Ahmad, Bukhari.

<sup>100</sup> These orders include the following: (1) Basically, all forms of muamalah are permissible unless there is an argument that forbids them. (2) All *dharar* (danger/loss) must be eliminated. (3) *Dharar* (danger/loss) must be prevented as much as possible. (4) something that applies according to custom is the same as something that applies according to syara' (as long as it does not conflict with shariah). (5) Laws based on adat (customs) apply with said custom and are void (not valid) with it when the custom is cancelled, such as currency in muamalat. (6) (Quoted) from the book of al-Dzakhirah a

opinion of the *fuqaha*<sup>101</sup>; (2) letters of application for fatwa regarding electronic money following shariah principles from Veritra Sentosa Internasional; (3) results of the discussion “Electronic Money Study in View of Conformity to Shariah Principles” between the Paitren Team and the Team (National Shariah Council–Indonesian Ulama Council), in Jakarta, August 22, 2017; (4) opinions and suggestions of the Shariah Banking Working Group comprising National Shariah Council–Indonesian Ulama Council, Otoritas Jasa Keuangan (OJK), Dewan Standar Akuntansi Syariah (DSAS-IAI), and the Supreme Court, September 7, 2017, in Jakarta; (5) opinions of participants in the Plenary Meeting of the National Shariah Council–Indonesian Ulama Council on Tuesday, 28 Dzulhijjah 1438 H/September 19, 2017.

Furthermore, in the preamble to “decide” or injunction, the Dewan Standar Akuntansi Syariah (DSAS-IAI) includes seven stipulations: (1) general provisions for electronic money, containing 23 points; (2) legal provisions, that is, e-money may be employed as a means of payment by following the provisions contained in this fatwa; (3) provisions related to contracts and legal personnel; (4) provisions for facility service fees; (5) provisions and limitations for the implementation and use of electronic money; (6) special provisions containing the placement of a nominal amount of money and loss of media money does not necessarily remove the nominal; and (7) dispute resolution is followed by closing.

In line with the development of information technology in society, which includes the use of online shop platforms, National Shariah Council–Indonesian Ulama Council responded to these developments in December 2021 by issuing fatwa No. 46/DSN-MUI/XII/2021 concerning

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rule. Any law that is based on an 'urf (tradition) or adat (customs of the people) becomes null and void when the custom is lost. Therefore, if custom changes, then the law also changes; 7) The leader's policy towards the people must be focused on the benefit (of society); 8) Where there is benefit, there is Allah's law.

<sup>101</sup> 6 arguments involve 1 Shohabat, ulama of classical and contemporary mazhab. Umar bin Khattab, Imam Malik bin Annas, Ibnu Hazm, Ibnu Taimiyah, Abdullah bin Sulaiman al-Mani', and Muhammad Rawas Qalah Ji.

online shops based on shariah principles. This fatwa has the same format as the previous fatwa format. The format of the fatwa in question is that the fatwa starts with the “considering” preamble, followed by the “remembering” preamble by quoting seven verses of the Koran<sup>102</sup>, quoting seven hadiths<sup>103</sup>, and eight fiqh principles<sup>104</sup>. Conversely, the preamble “pay attention” (1) cites the opinion of the *fuqaha*;<sup>105</sup> (2) cites five previous Dewan Standar Akuntansi Syariah fatwas;<sup>106</sup> (3) results of the Focus Group Discussion with the Indonesian E-Commerce Association (idEA) on April 19, 2021; (4) opinions and suggestions of participants in the 55th Limited Liability Company Plenary Meeting on Wednesday, December 22, 2021.

In the preamble to “decide” or injunction, the Limited Liability Company includes nine stipulations: (1) general provisions that contain 18 points; 2) legal provisions that state that transactions using the Online Shop Platform may be carried out by following the provisions contained in

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<sup>102</sup> Q.S. al-Ma'idah (5): 1; Q.S. al-Isra' (17):34; Q.S. al-Nisā' (4):29; Q.S.al-Kahfi (18): 19; Q.S. al-Qashash (28): 26; Q.S. al-Baqarah (2): 282; Q.S. al-Nisa' (4): 58.

<sup>103</sup> Hadith narrated by Abu Daud dan Tirmidzi, dari Abu Hurairah,; narrated by Imam Bukhari from Abu Hurairah,; narrated by Ibnu Majah dari 'Ubadah bin al-Shamit r.a.,; narrated by Ahmad from Ibnu 'Abbas r.a; narrated by Malik from his father Yahya al-Mazini r.a., and narrated by al-Hakim dan al-Dar al-Quthnidari Abu Sa'id al-Khudriy r.a.; narrated by al-Tirmidzidari 'Amr bin 'Auf al-Muzani, and narrated by al-Hakim from Katsir bin Abdillah bin 'Amr bin 'Auf al-Muzani r.a.; narrated by 'Abdar-Razzaq and Abu Hurairah r.a. dan Abu Sa'id al-Khudri r.a; narrated by Ibnu Majah from Ibnu Umar r.a., narrated by alThabarani from Jabir r.a; narrated by Muslim, from 'Aisyah and from Tsabit from Anas.

<sup>104</sup> The orders are as follows: (1) Basically, all forms of muamalah are permissible unless there is an argument that forbids them. (2) All dharar (danger/loss) must be eliminated. (3) Dharar (harm/loss) must be prevented as much as possible. (4) Something that applies based on custom is the same as something that applies based on shariah (as long as it does not conflict with shariah). (5) Customs and traditions can be determined as lrukum. (6) Legal decisions depend on whether there is a causa. (7) The leader's policy toward the people must be focused on the benefit (of society). (8) Where there is benefit, there is Allah's law.

<sup>105</sup> Muhyiddin Yahya bin Syaraf al-Nawawi, *Raudhah al-Thalibin*, Juz V (Riyadh: Dar 'Alam al-Kutub, 1423 H12003 M), 687; Wahbah al-Zuhaili, *al-Fiqh al-Islami wa Adillatuh*, Juz IV (Damaskus: Dar al-Fikr, 1989). 106.

<sup>106</sup> The Fatwas are as follows: (1) Fatwa DSN-MUI No: 85/DSN-MUI/XII/2012 regarding Wa'ad in Shariah Financial and Business Transactions; (2) Fatwa DSN-MUI No: 110/DSN-MUI/IX/2017 regarding Purchase Agreement; (3) Fatwa DSN-MUI No: 116/DSN-MUI/IX/2017 regarding Shariah Electronic Money, (4) Fatwa DSN-MUI No: 112/DSN-MUI/IX/2017 regarding Ijarah contracts; (5) Fatwa DSN-MUI No: 113/DSN-MUI/IX/2017 regarding Contracts of Wakalah bi al-Ujrah.

this fatwa; 3) characteristics of online shop, containing three points; (4) legal subjects of online shop: (a) traders and customers; (b) sellers and buyers; (c) expedition service providers; (5) provisions related to Sighat al-‘Aqd; (6) online shop provisions; (7) online shop mechanism; (8) application of contract provisions in the online shop; (9) dispute resolution; (10) closing provisions and the format of the fatwa followed by the date of stipulation and the signature of the chairman of the Indoneisan Ulama Council, as well as the secretary.

### **Methodology of Fatwa on Digital Transaction**

Misdawati’s research shows that the epistemological pattern in the paradigm of the formulation of the Limited Liability Company is characterized by idealism and realism of Islamic law and can always be responsive<sup>107</sup>, adaptive, contextual, and dynamic, often due to developments in the existing economic problems of society<sup>108</sup>. Rahman concluded that the Limited Liability Company decision-making and fatwa methods employed the *ijtihād bayānī*, *ta’līlī*, and *istiṣlāḥī* methodologies in contemporary issues or had not received detailed discussion from school scholars, especially in shariah finance<sup>109</sup>.

Unfortunately, Rahman’s conclusion was not elaborated further. Rahman did not give an example of epistemological construction as well as the use of the three methods he put forward. Meanwhile, at the "tempus" level, Rahman's research was carried out in 2016, while to date, in 2022, 152 fatwas have been issued. Thus, it can be concluded that the number of fatwas at that time was still far below the current fatwa product.

<sup>107</sup> See further DSN-MUI: M Atho’ dan Muhammad Maksud Mudzhar, *Fikih Responsif: Dinamika Integrasi Ilmu Hukum, Hukum Ekonomi Dan Hukum Keluarga Islam* (Yogyakarta: Pustaka Pelajar, 2017), 2017.

<sup>108</sup> Dwi Novaria Misdawati and Athoillah Islamy, "IDEALISME DAN REALISME DALAM PARADIGMA FATWA EKONOMI SYARIAH DI INDONESIA," *Jurnal Asy-Syukriyyah* 23, no. 2 (March 7, 2022): 128–42, <https://doi.org/10.36769/asy.v23i2.209>.

<sup>109</sup> Rahmat Abd. Rahman, "Metode Ijtihad Komisi Fatwa Majelis Ulama Indonesia," *Nukhbatul ‘Ulum* 2, no. 1 (February 23, 2016): 159–66, <https://doi.org/10.36701/nukhbah.v2i1.11>.

Meanwhile, the research conducted by the author is a continuation of research conducted by Rahman and previous researchers which has a close theme.

The construction of the study of fatwas about the digital economy after the author traces it is like the fatwas that have been carried out before, that is, from the three fatwas that the author analyzed, two fatwas with No: 54/DSN-MUI/X/2006 concerning shariah card and fatwa No.: 116/DSN-MUI/IX/2017 concerning shariah electronic money is an order from *mustafti*. *Mustafti* in terms of the fatwa is a shariah financial institution. Conversely, one fatwa, namely, fatwa No. 146/DSN-MUI/XII/2021 regarding online shops, is not like the previous fatwa because this one is an initiative as well as DSN's response to existing technological developments to be employed as a guideline by the community. Thus, fatwa No. 146/DSN-MUI/XII/2021 concerning this online shop appears not as an order product from a *mustafti* (individual/institution or Shariah Supervisory Board).

The three fatwas have legal reasoning both in terms of textual *naqliyah* and rational *aqliyah*. After analyzing the three National Shariah Council–Indonesian Ulama Council fatwas, the researcher concluded that all three consistently included references to authoritative texts (*al-nusus al-syar'iyah*), namely, al-Qur'an and ḥadīs, although *wajh al-dilalah* (line of argument) *naṣṣ-naṣṣ*, it is generally not mentioned. The fatwas also follow the standard *istinbāt* (legislative) method (*manhaj*) agreed upon by most scholars, that is, after referring to authoritative arguments, this fatwa refers to *ijmā'* because *qiyās* cannot be quoted. Hence, fatwa refers to the opinion of scholars, both classical and modern.

The decision to issue a fatwa as mentioned above was conducted by the National Shariah Council–Indonesian Ulama Council because the National Shariah Council–Indonesian Ulama Council wanted to maintain loyalty to tradition by appreciating the achievements of previous scholars. Thus, the National Shariah Council–Indonesian Ulama Council fatwa



depends a lot on the existence of a reference that refers to the continuity and identity of a school of fiqh. This may be aimed at keeping the continuity between orthodoxy and new patterns of thinking—with its genealogy and links—maintained. Therefore, the National Shariah Council–Indonesian Ulama Council Fatwa does not allow for a clash between the old and the new fiqh.

Similarly, the three fatwas are based on fiqh principles. The frequency of using fiqh rules in the three fatwas above is quite a lot. The use of fiqh rules, among others, is found in the fatwa regarding shariah cards in the number of five rules. Conversely, the fatwa on “electronic money” and “online shop” each contains eight fiqh principles by placing the top position of the fiqh rule “*al-aṣl fī al-mu’āmalāt al-ibāḥat illā an yadulla dalīl alā taḥrīmihā*” (origin of all the mu’amalah model may be carried out until evidence is found that forbids it). With this rule, it is as if the National Shariah Council–Indonesian Ulama Council says “whatever the problem is, this rule is the solution.” Such a fatwa indicates that the National Shariah Council–Indonesian Ulama Council fatwa is quite lax as stated in the infallible research, Maksum<sup>110</sup>. Hence, it can also be interpreted that to allow a muamalah practice, there is no need for an argument that allows it, but what is needed is to know that there is no argument that prohibits it, Kiai Afif<sup>111</sup>.

Besides these principles, other rules are mentioned, for example, “*al-masyaqqat tajlib al-taysīr*” (difficulties bring convenience), which are contained in the fatwa shariah card argument. This convenience rule is the main principle (*al-dhawābit al-aṣliyyah*)<sup>112</sup> in transactions using a shariah

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<sup>110</sup> The Dissertation focuses on Fatwa of Contracts and rights agreement. The fatwa is limited in 2000–2011. See Maksum, “Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Dalam Merespon Produk-Produk Ekonomi Syariah Tahun 2000-2011 (Studi Perbandingan Dengan Fatwa Majelis Penasihat Syariah Bank Negara Malaysia).”

<sup>111</sup> Muhajir, *Membangun Nalar Moderat (Kajian Metodologis)*, 43.

<sup>112</sup> Nashr Farid Muhammad Wasil dan Adb Aiz Muhammad Azzam, *Al-Madkhal Fī Al-Qawāid Al-Fiqhiyya Wa Atsaruhā Fī Al-Aḥkām Al-Syari’ah*, Terj. Wahy (Jakarta: Amzah, 2009), 55.

credit card. Meanwhile, fatwa numbers 116 and 146 do not include a similar rule, but the rule utilized is the rule “*al-ḍararu yuzāl*” (all damage must be removed). The next rule is the rule of “*adah*” (local wisdom), namely, “*al-tsābitu bi al-'urf kas sābiti bi al-Syar'i*” (something that applies based on custom is the same as something that applies based on syara'). This rule was derived from the hadīs of the Prophet Muhammad: “*mā rā'ā hu al-muslimūn ḥasanan fahuwa inda Allāh ḥasan.*”

Explicitly, the ḥadīs (*marfū'*) narrated by Abdullāh Ibn Mas'ud r.a, which is related to the expression *mā rā'ā hu* (general perception), is a thought, aspiration, or perception of Muslim society, which has become the norm in society. On a practical level, these social norms will gain praise (in this world and the hereafter) and the legitimacy of Shariah law<sup>113</sup>.

Thus, the National Shariah Council–Indonesian Ulama Council fatwa numbers 54, 116, and 146, are traditional responses that shift toward modernity. This phenomenon occurs because of technological advances that trigger the formation of new cultural settlements in the economic field (shariah). It is relevant here to mention the rule “*al-Aḥkām al-mabniyatu alā al-'urf tataghoyyaru bitaghooyurihi Zamanan wa makānan*” (laws based on tradition can change because of changes in time and space of the tradition)<sup>114</sup>.

The three fatwas use the 'urf rule as one of their arguments, especially given the development of modern technology, which has led to the emergence of a new culture in society. Then, in the National Shariah Council–Indonesian Ulama Council fatwa numbers 116 and 146 close with the rule “*ainamā wujudati al-maṣlahatu fasamma ḥukm Allāh*” (where there is benefit, there is God's law). Furthermore, Fatwa No. 54, ends with the rule “*dar'u al-mafāsīd muqaddamun alā jalb maṣāliḥ*” (avoiding damage must be a priority over bringing benefit).

<sup>113</sup> Akmal Bashori, *Fikih Nusantara: Dimensi Keilmuan Dan Pengembangannya* (Jakarta: Kencana Media Group, 2021), 154–55.

<sup>114</sup> Khallāf, *Ilmu Uṣūl Al-Fiqh*, 81.

Therefore, the researcher concluded that the three fatwas mentioned above utilized inductive thinking logic. This conclusion is based on the fact that a fatwa can never be separated from the social conditions that existed when the fatwa was formulated. Therefore, a fatwa as a product of Islamic legal thought can be very relevant today but may not be relevant in the future.

## **Conclusion**

The formulation of the National Shariah Council–Indonesian Ulama Council fatwa numbers 54, 116, and 146 concerning digital transactions uses the *istislahi* argument, as shown by the proposition of *fiqh* rules, which is more dominant than the textual proposition. These fatwas provide signs of benefits such as *maqāṣid shariah* (the purpose of the presence of law) for the development of the shariah economy in Indonesia, especially in digital transactions. The consistency of the use of methodology in these fatwas is shown in the structure and use of the arguments of *al-nusus al-syar'iyah* (al-Qur'an and Sunnah) and the opinions of the ulama, as well as the rules of *fiqh*. Nevertheless, there was an expansion in fatwa numbers 54, 116, and 146 from the five-point rule became the eight-point rule. Moreover, this fatwa is integrated with the previous fatwa dictum. For instance, the shariah card is integrated with fatwa numbers 9, 11, 17, 19, and 43; e-money is integrated with fatwa numbers 62, 112, and 113; and the online shop is integrated with fatwa numbers 85, 110, 111, 112, 113, and 116. These fatwas are valid in terms of the logic of their legal findings and can be trusted because time has shown that. Future research should investigate digital business transaction fatwas in Indonesia using comparisons with other countries, so that the research results can be utilized as a reference for formulating digital business transaction fatwas in Indonesia.

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