

Preference of *Maqasid Al-Sharia* Approach by the National Sharia Board of the Indonesian Council of Ulama for Fatwa Arrangement in Banking Field

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Abstract: The rapid development of Islamic banking industry in Indonesia should be appreciated since it becomes one of the forms of implementation and greatness of Islam propagation in the country with the largest Muslim population in the world. The existence of various transaction models as well as their derivation and innovation inevitably demands the concerned parties to be accommodative and selective so that these developments can be responded and searched for the solutions according to the sharia corridor. The National Sharia Board of the Indonesian Council of *Ulama* (DSN MUI) is the only Indonesian official institution authorized for creating Islamic economic and financial fatwa as well as monitoring the application in Islamic financial institutions such as Islamic banks, insurances, and pawnshops. This research is the library research thus the research employs the qualitative approach with the documentary study method, and the analysis is the Critical Discourse Analysis. The focus or scope of the study is limited only to the DSN fatwas in the banking field. The research results discover that the *maqasid al-sharia* approach becomes one of the solutions of DSN MUI consideration in solving the considered problems in the banking field.

1 INTRODUCTION

The awareness and resurgence to practice the Islamic economy were indicated by the establishment of the Islamic Development Bank in 1975, followed by the establishment of Islamic financial institutions in different countries (Ahmad, 2003; Abdi, 2011). Particularly in Indonesia, it was marked by the establishment of the Islamic bank in 1992. It was further followed by the emergence of various sharia financial institutions in 1994, pawnshops (sharia pawn service units) in 2003, and so on (Lawrence, 2014).

The appearance of Indonesian sharia financial institutions followed by the variety of products they offered brought out their own problems, which means that the sharia of the products should be ensured (Siddiqi, 2006; Hamisu and Hassan, 2017). In responding to this, then the Indonesian Council of *Ulama* (MUI) established a specific institution to solve various economic and financial problems, namely the National Sharia Board (DSN) (Ullah,

2014). DSN generally provided fatwas for various problems related to the products and services of sharia financial and economic institutions. Since its establishment in 1999 to February 2017, DSN MUI has issued 109 fatwas.

The initiation of the National Sharia Board of the Indonesian Council of *Ulama* (DSN-MUI) establishment started from the execution of *Ulama* Workshop about Sharia Mutual Funds held by the Central MUI on July 29-30, 1997, in Jakarta that recommended the importance of an institution which handles the problems related to the sharia financial institution activities. This was then followed up by MUI by conducting a meeting of the National Sharia Board (DSN) Establishment Team on October 14, 1997. Eventually, MUI Board of Directors issued the Decree No. Kep-754/MUI/II/1999 dated February 10, 1999, about the Establishment of the National Sharia Board of MUI. Furthermore, the MUI Board of Directors held the introductory event with the administrators of DSN-MUI on February 15, 1999, in Indonesia Hotel, Jakarta. Then, the administrators of DSN-MUI held the Plenary Meeting I of DSN-

MUI for the first time on April 1, 2000, in Jakarta by approving the Basic Guidelines and the Household Guidelines of DSN-MUI.

DSN MUI was created to actualize Muslims' aspiration regarding the economic problems and to encourage the application of Islamic teachings in the economic and financial fields that are implemented according to the guidance of Islamic law. The establishment of DSN-MUI is the efficiency and coordination step of the *ulama* in responding to the issues related to the economic and financial problems. The various problems or cases which require fatwas will be accommodated and discussed together so that the similarity of view in handling the problems will be obtained by each of Sharia Supervisory Board (DPS) in the sharia financial institutions. To encourage the application of Islamic teachings in the economic and financial life, DSN-MUI will always play the proactive role in responding to the dynamic development of Indonesian society in the economic and financial fields.

The duties and functions of DSN MUI are as follow:

- a. Issuing fatwas about sharia economy to be the guidance for the practitioners and regulators.
- b. Publishing the recommendation, certification, and sharia approval for the sharia financial institutions and business.
- c. Conducting the supervision of sharia aspects of products/services in the sharia financial institution/business through the Sharia Supervisory Board.

The authority of DSN MUI are as follow:

- a) Issuing fatwas which bind the Sharia Supervisory Board in each sharia financial institution and become the basic legal action of related parties.
- b) Issuing fatwas which become the foundation of the provisions/regulations issued by the authorized institutions, such as the Finance Department and Bank Indonesia.
- c) Providing and/or revoking the recommendation of names to be the Sharia Supervisory Board (DPS) in a certain sharia financial institution and business.
- d) Inviting the experts to explain the problems required in the sharia economy discussion, including the domestic and foreign monetary authorities/financial institutions.
- e) Giving a warning for the sharia financial institutions to cease the deviation from the fatwas issued by the National Sharia Board.
- f) Proposing for the authorized institutions to take some action if the warning is not regarded.

Fatwa as the *ijtihad* result of *ulama* is created to respond the existing questions or situations. A fatwa is an opinion stated by *ulama* to participate in solving the problems encountered by the society. Associated with the fatwas of DSN MUI, there is its own uniqueness in terms of the nature of fatwa as the *ijtihad* result that does not bind the society (Alsayyed, 2009). However, in the case of DSN MUI fatwas, it the opposite that the fatwas bind the parties engaged in the Islamic finance industry. The fatwas produced by DSN MUI should not only be in line with the sharia formal rules, yet it also should bring the benefits for all parties, both the financial institutions and Muslims in general. Wisdom and profound knowledge are required for those who are involved in the production of fatwas, so the fatwas are expected to confirm to the sharia formal rules on one side as well as provide productivity and flexibility for the stakeholders on the other side. This is one form of *maslahah* (benefit/public interest) which becomes the essence of *maqasid al-sharia* and even the sharia itself.

Linguistically, *maqasid al-sharia* consists of two words, i.e., *maqasid* which means aim, and sharia which means the teachings, the rules, and the law of Allah that are passed down to His servants to reach the prosperity in the world and the hereafter. By the term, Muhammad Tahir Ibnu Asyur formulated the definition of *maqasid al-sharia* as the purpose and wisdom desired by the Sharia Maker (Allah) to all or most of the sharia application, where the objectives are not specific to a certain issue of Sharia law yet are comprehensive (Mingka, 2013). The word "*maqasid*" was initially employed by al-Turmuzi al-Hakim, the *ulama* lived in the third century of *Hijriah* (al-Raysuni, 1995).

Meanwhile, Imam Najmuddin al-Tufi put the concept of *maslahah* (benefit/public interest) in the highest position (Maimun, 2014). According to al-Tufi, from 19 postulates of Islamic law, the strongest is *nash* (al-Qur'an and Hadith) and *ijma'* as long as it corresponds to the *maslahah*, and if it is not suitable then the *maslahah* should be prioritized instead of *nash* and *ijma'*. The priority of *maslahah* over *nash* and *ijma'* is conducted by taking *takhsis* (specialization) or *bayan* (explanation) for the definition of *nash* or *ijma'*, not by postponing them, just as putting *sunnah* over al-Qur'an first with *bayan*.

According to Imam al-Ghazali, *maqasid al-sharia* or the aim of sharia is improving the better life of all humanity (Chapra, 2000). There are five goals to obtain, i.e., through the protection of the faith or religion (*al-din*), the soul (*al-nafs*), the

intellectuality (*al-'aql*), the descendant (*al-nasl*), and the wealth (*al-mal*). These five goals of sharia can be acquired by the effort of all human beings. In the aim of sharia, the protection of the faith or religion is placed first, since it can provide the worldview which tends to affect the personality of all human beings, their behaviors, lifestyle, tastes, preferences, as well as attitude toward other humans, resources, and environment. The religion will provide the stability of the material and spiritual interests of human beings. Besides, it can also be the moral screen, so humans can use the resources more preciously.

Al-Syatibi then divided *maslahah* into three levels, i.e., *dharuriyyat* (primary), *hajiyyat* (secondary), and *tahsiniyyat* (tertiary). *Maqasid* or *maslahat dharuriyyat* is something that must exist for the realization of the welfare of religion and the world. If this does not exist, then it will cause damages or the loss of life, such as eating, drinking, *salat*, fasting, and other religious activities. The *maslahah* or *maqasid dharuriyyat* consists of five things, i.e., religion (*al-din*), soul (*al-nafs*), descendant (*an-nasl*), wealth (*al-mal*), and mind (*al-'aql*).

The five *dharuriyyat* should be run in sequence. For instance, maintaining *al-din* should be prioritized first over maintaining others, or maintaining *al-nafs* should be prioritized over *al-'aql* and *al-nasl*. For example, suicide or self-destruction is prohibited, but if it is in the interest of jihad and Allah's religion, then it is permitted. This happens because maintaining religion should be prioritized over the soul. By the argumentation, then most of the *ulama* permit *istisyhad* of the Palestinian fighters with the legal consideration.

Maqasid or *maslahat hajiyyat* is something that should exist in order to live more freely and avoid any difficulties. If this does not exist, it will not cause any damage or death, but it may cause *masyaqqah* and narrowness. For example, in the prayer issue, there is *rukhsah* in the form of *salat jama'* and *qasar* for the travelers. *Maqasid* or *maslahat tahsiniyyat* is something that should exist for the good deeds or politeness. If this does not exist, it will not cause any damage or loss of things and it will not cause *masyaqqah* in doing so, but it will be considered as inappropriate regarding the manners and courtesy, for example wearing clothes for men.

The purpose of *maqasid al-sharia* are as follow (Mingka, 2013):

- a. As the basic of *tasyri'*. Everything that has been appointed by Allah and His prophet attempts to

manifest the *maslahah* for every human being and reject *mudharat* (damages), whether it is acknowledged directly or even indirectly. All orders and prohibitions of Allah and His prophet are *maqasid al-sharia*, such as *salat*, fasting, the prohibition of usury, the prohibition of alcoholic beverages, and so on.

- b. As the assisting tool of interpreting postulates. *Maqasid al-sharia* or *maslahah* helps to interpret and make the decision of wisdom consisted in al-Qur'an and *as-Sunnah*. For example, understanding hadith about *talaqqi rukban*, *tas'ir*, and so on. Muhammad PBUH forbids *tas'ir*, but as the time goes by where there was a change in society's economic behavior, then Caliph Umar bin Khattab allowed or even conducted *tas'ir*.
- c. As the postulates of law. *Maqasid al-sharia* or *maslahah* can be considered as sharia postulates if there is no *nash* as the reference of law. For example, the collection of al-Qur'an in one *mushaf* during Caliph Abu Bakar era, the uniformity of *mushaf* al-Qur'an in Caliph Usman bin Affan era, and so on.

Therefore, it is fascinating to investigate the tendency of DSN MUI in making such effort based on the *maqasid al-sharia* approach.

2 METHODOLOGY

The approach employed in this research was the qualitative approach, while the research type was the library research, i.e., using library materials as the text data resource. Since this was the qualitative research, the focus of the analysis was the quality in narrating results and discussion, although it did not rule out to quantifying number or percentage to support the research. This research focused on scrutinizing the National Sharia Board of the Indonesian Council of *Ulama* fatwas in banking field which utilizes *maqasid al-sharia* approach as the *ijtihad* method, not *maqasid al-sharia* as the reference of *tasyri'* or the aim of sharia.

The primary data resource of this research was the fatwas issued by the National Sharia Board of the Indonesian Council of *Ulama*, i.e., the fatwa no. 01/DSN-MUI/IV/2000 until 19/DSN-MUI/II/2017. Furthermore, the secondary data resource was every data aside from the primary data which supported this research, such as books, journals, and anything related or required for this research.

The employed data analysis was the discourse analysis in achieving the accurate understanding

about *maqasid al-sharia* approach preference for the consideration of DSN-MUI (the National Sharia Board of the Indonesian Council of *Ulama*) in creating the fatwas of economics and finance. The discourse analysis takes the text interpretation more into account rather than the sum of the category unit like the content analysis. The basic of discourse analysis is interpretation since the discourse analysis is part of the interpretative method that counts on interpretation and researcher's analysis. Thus, during the discourse analysis process, it does not require coding sheets that will take some items or derivative of a specific concept. This discourse analysis has the pretention in focusing on the hidden message. The discourse analysis does not only focus on the macro level (the content of a text) but also the micro level that compiles the text such as words, sentences, expressions, and rhetorical. In the discourse analysis, it is not only words or other content aspects that can be coded, but the complex discourse structure can also be analyzed in every description level (Eriyanto, 2003).

3 RESULTS AND DISCUSSION

These are the DSN-MUI fatwas in banking field which employ *maqasid al-sharia* approach, the first is fatwa no. 14/DSN-MUI/IX/2000 about the Distribution of Business Result System in the Sharia Financial Institution (LKS). The fatwa of DSN MUI decided that in the principle, LKS is permitted to use the Accrual Basis or Cash Basis system in the financial administration. From the *maslahah* aspect (*al-ashlah*), during the recording, it is advised to employ the Accrual Basis system; yet, in the distribution of business results, it should be determined based on the actual acceptance (cash basis). The system setting that has been chosen should be agreed upon in an agreement. The consideration of *maqasid al-sharia* in this fatwa refers to the hadith that also becomes the rule reference, which is: "It is forbidden to harm your own self and it is forbidden to harm the others." In the *fiqh* rule: "Where there is *maslahah*, there is Allah's law." This fatwa attempts to provide the *maslahah* solution for Islamic Financial Institution in the financial administration, also to bridge Islamic Financial Institution and other parties to equally take the benefits from the agreement they agreed. Since basically there is no *nash* that orders the distribution of business result system or vice versa, no prohibition regarding this.

The second is fatwa no. 16/DSN-MUI/IX/2000 about the Discount in *Murabahah*. This fatwa of

DSN MUI decided that the price (*tsaman*) in trading is the amount that has been agreed by two parties, either equal, higher, or even lower to the value (*qimah*) of things that will be the object of trading. The price in *murabahah* trading is the trading price and the required cost added with the benefit that corresponds to the deal. If Islamic Financial Institution obtains a discount from the supplier in the trading process, the actual price is the price after discount; thus, the discount is the rights of customers. If the discount occurs after the agreement, the discount will be conducted based on the deal contained in the agreement. In the agreement, the discount after the agreement should be agreed and signed. The consideration of *maqasid al-sharia* in this fatwa refers to the *fiqh* rule: "Where there is *maslahah*, there is Allah's law." The *maslahah* becomes the concern in deciding fatwa about the *murabahah* discount. This is because there is no *nash* that regulates the *murabahah* discount. Thus, to avoid manipulation and fraud, the discount which is the rights of the buyer will still be returned to the buyer if it occurs before the agreement between the bank and the client, and this is *maqasid al-sharia* in the form of protecting the rights (property) of the clients.

The third is fatwa no. 18/DSN-MUI/IX/2000 about the Backup of Earning Asset Deletion in Islamic Financial Institution. In this fatwa, DSN MUI decided that the backup is permitted to be conducted by Islamic Financial Institution. The fund used for the backup is taken from the profit section that becomes the Islamic Financial Institution's rights thus this will not harm the client. In the tax calculation, Islamic Financial Institution may reserve all profits. Regarding the profit sharing, the backup may only come from the share of profits that Islamic Financial Institution entitles to. The consideration of *maqasid al-sharia* in this fatwa refers to the hadith that also becomes the rule reference, which is: "It is forbidden to harm your own self and it is forbidden to harm the others." In the *fiqh* rule: "The danger (heavy loads, losses) should be eliminated.", also the rule: "Where there is *maslahah*, there is Allah's law." The *maslahah* and the habit in financial institutions indeed require backup as one of the attempts to minimize the risk of losses that may happen. Since if it is violated, the bank can be at risk, and this is categorized as the danger that should be eliminated. There is no *nash* that strictly regulates backup, whether orders or prohibitions.

The fourth is fatwa no. 63/DSN-MUI/XII/2007 Bank Indonesia Sharia Certificate (SBIS). In this fatwa, DSN MUI decided that SBIS is the valuable

letter in the currency of Rupiah that is issued by Bank Indonesia, which has the short time period regarding the sharia principle. SBIS as the monetary control may be issued to fulfill the requirement of open market operation. Bank Indonesia give rewards for the SBIS holder regarding the employed agreement. Bank Indonesia shall return the fund of SBIS to the holder during the due date. Sharia banks may own SBIS to utilize the fund that has yet been distributed to the real sector. The agreement that can be used for the issuing of SBIS instrument is the agreement of *Mudharabah (Muqaradhah)/Qiradh, Musyarakah, Ju'alah, Wadi'ah, Qardh, and Wakalah*. The consideration of *maqasid al-sharia* in this fatwa refers to the rule, which is: "The action of Imam (the authority holder) toward the society shall follow the *maslahah*." Also the rule: "The necessity may occupy the emergency position." There are some *maslahah* aspects that can be the consideration, i.e., in macro/state in the form of monetary control related to inflation and its kind, also the *maslahah* for banks and depositors using funds that are not absorbed in the real sector.

The fifth is fatwa no. 87/DSN-MUI/XII/2012 about the Income Smoothing Method of the Third-Party Funds. In this fatwa, DSN MUI decided that the Income Smoothing Method with or without forming the backup may be conducted in the Profit Sharing of The Third-Party Funds (DPK) by following the conditions in this fatwa, i.e., Islamic Financial Institution may form the Reserve Fund (PER) for anticipating the possibility of profit sharing realization for the depositors under the projected rate of return. In the principle, the Reserve Fund may be formed through the allowance for profit before being shared in the condition that the actual profit share exceeds the projected rate of return and with the DPK customer's consent. The Reserve Fund (PER) must not be formed by reducing the profit which becomes the right of DPK customer if the actual profit sharing is lower than the projected rate of return. In the agreement of *Mudharabah Muqayyadah*, the Reserve Fund (PER) may be formed from the allowance for the profit of the customer's rights that is higher than the projected rate of return after the profit sharing with the permission of DPK customer. The Reserve Fund formed by Islamic Financial Institution (IFI) from the allowance for profit before profit sharing that exceeds the projected rate of return is collectively the DPK customer's rights that should be managed separately by IFI for the revenue management process and the rate of return for the DPK customer. The further arrangement and supervision of the

policy and the manifestation of IFI in the establishment and the usage of the Reserve Fund (PER) are the competence of the authorities. The consideration of *maqasid al-sharia* in this fatwa refers to the rule, which is: "Where there is *maslahah*, there is Allah's law." Also the rule: "The action of Imam (the authority holder) toward the society shall follow the *maslahah*". And the rule: "The necessity may occupy the emergency position." Also: "*Hajat* does not allow a person to take other's property." DPK is the trust that should be managed carefully by IFI, thus for the *maslahah* and necessity/*hajat*, DSN MUI allows the income smoothing, yet with the caution that it will not harm the right of customers owning DPK.

The sixth one is fatwa no. 97/DSN-MUI/XII/2015 about the Sharia Deposit Certificate (SDS). In this fatwa, DSN MUI decided that the issue of Sharia Deposit Certificate can be conducted by the *Mudharabah* agreement. The issue of SDS can only be conducted by Sharia Bank as the fund manager (*Mudharib*). The SDS publisher shall refund the SDS holder during the due date. The profit sharing of issued SDS should be from the business activities that are funded by SDS, both the business activities that have the fixed and not fixed yields, regarding the agreement. The mechanism of the profit sharing is conducted based on the agreement of all parties that corresponds to the sharia principle. The issue of SDS must not employ the interest mechanism, including the mechanism of discount. SDS may only be transferred after the SDS fund is employed in the business activities of SDS publisher. SDS may be transferred before the due date. The transaction that is conducted for transferring SDS may only use the trading agreement with the price that has been agreed. The purchase of SDS may be conducted by an individual and the entity such as the sharia financial institutions, conventional financial institutions, or other institutions. SDS may be traded in repo based on the sharia principle in the secondary market. The consideration of *maqasid al-sharia* in this fatwa refers to the rule, which is: "Every *madharat* (danger) should be avoided at any cost." Also the rule: "All *madharat* (danger) should be eliminated." And the rule: "The action of Imam (the authority holder) toward the society shall follow the *maslahah*." And the rule: "Avoiding *mafsadah* (damage) should come first then taking *maslahah*." In the attempt to improve the competitiveness and product diversity, thus SDS can be the alternative of fundraising for the *maslahah* of IFI and related parties.

4 CONCLUSIONS

Regarding the results and discussion, it can be concluded that the decision of fatwas by DSN MUI in banking field is overall conducted for the *maslahah* or *maqasid al-sharia* for the stakeholders. On the other hand, DSN MUI also employed *maqasid al-sharia* as the postulate or approach in concluding the result of *ijtihad*, as explained in the six fatwas of DSN MUI above. This research only observed fatwas in banking and limited only to *maqasid al-sharia* as the approach in formulating fatwas, thus it still opens the research space in other economics and finance fields.

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