

THE LEGAL REASONING AND SOCIO-LEGAL IMPACT OF THE *FATWĀS* OF THE COUNCIL OF INDONESIAN ULAMA ON ECONOMIC ISSUES*

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Abstrak: Argumen Hukum dan Implikasi Sosial-Yuridis Fatwa MUI tentang Ekonomi. Artikel ini membahas fatwa-fatwa ekonomi DSN-MUI dari segi argumentasi hukum dan dampak sosial dan hukumnya. Dari 82 fatwa, 17 di antaranya dibahas meliputi: fatwa perbankan, asuransi, pasar modal, dan gadai. Studi ini menemukan bahwa fatwa DSN selalu merujuk kepada Alquran dan Hadis, terkadang juga kepada ijmak, *qiyās*, dan pendapat ulama. Meski demikian, patut dicatat, di sisi lain, fatwa-fatwa tersebut mengesankan terlalu ingin memberikan “konfirmasi” terhadap setiap instrumen perbankan konvensional melalui penggunaan *hīlah* dan akad *murakkab* yang dilarang oleh Rasulullah. Studi ini juga menemukan adanya dampak fatwa DSN terhadap Undang-undang dan Peraturan Pemerintah.

Kata Kunci: fatwa, ekonomi syariah, akad ganda, dewan syariah nasional (DSN)

Abstract: *The Legal Reasoning and Socio-Legal Impact of the Fatwās of the Council of Indonesian Ulama on Economic Issues.* This article examines the economic *fatwās* of the Council of Indonesian Ulama (MUI) represented by the National Board of Sharia (DSN) at two levels: legal reasoning and socio-legal impact. Out 82 *fatwās*, some 17 are discussed covering: banking, insurance, capital market, and pawn issues. The study found that DSN’s *fatwās* are consistent in making references to the Quran and Hadith, and often to *ijmā*, *qiyās*, and the views of ulama, but too anxious to offer “confirmation” to every conventional banking instrument through *hīlah* and multiple ‘*aqds* which are prohibited by Rasulullah. The study also found that the socio-legal impact of those *fatwās* on laws and government regulations are identifiable.

Keywords: *fatwā*, islamic economy, multiple ‘*aqds*, national board of sharia (DSN)

Introduction

Fatwās (*fatāwā*) in modern independent Indonesia are neither issued by official Muftis, for such an office is non-existent, nor by individual *mufṭīs* as they are inclined to joint others to issue *fatwās* collectively. Instead, they are issued by committees of various Muslim organizations such as the Majelis Tarjih of the Muhammadiyah movement, Bahsul Masa’il of the Nahdlatul Ulama (NU), and the *Fatwā* Committee of the Council of Indonesian Ulama (Majelis Ulama Indonesia, abbreviated as the MUI). While the first two committees belong to the modern and traditional

Indonesian Muslim organizations, respectively, the third is generally seen as a convergence or confederation of both modern and traditional elements since the members consist of the representatives of both the Muhammadiyah and the Nahdlatul Ulama organizations. The *Fatwā* Committee of the MUI was created in 1975 at the same time with the establishment of the MUI itself and has issued some 185 *fatwās* on such various issues as ritual, familial, medical, social, economic, and even political. As from 1999, the MUI has created another committee with a special task to issue *fatwās* on Islamic (Sharia) economic issues called Dewan Syariah Nasional (National Sharia Board) abbreviated as DSN). This was due to the pressing need brought about by the emergence and development of Islamic (Sharia) banking and other Islamic financial institutions in Indonesia beginning in the early 1990s.

This article is aimed at examining those economic

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fatwās issued by the National Sharia Board (the DSN) in terms of their legal reasoning and their impact on society especially on how a number of laws and government regulations have adopted those *fatwā*. This is important to gain some understanding of both the validity and the impact of those *fatwās* on society. Since its creation in 1999, the DSN has issued some 82 *fatwās* on Islamic economic issues ranging from savings under the schemes of *mudārabah* and *wadi'ah*, *murābahah*, *bay' al-salām*, *mushārahah*, *ijārah*, *wakālah*, *kafālah*, *hawālah*, safe deposit box, gold *rahn*, letter of credit, Sharia charged card, sale and lease back, and so forth. Some 58 of those *fatwās* were devoted to Islamic banking issues, 10 *fatwās* to Islamic capital market, 6 *fatwās* to Islamic insurance, 3 *fatwās* to Islamic bonds, 3 *fatwās* to Islamic pawn, and one to Islamic credit. This article will limit the examination, by way of examples, to only a few *fatwās* on Islamic banking, Islamic insurance, Islamic capital market, and Islamic pawn issues.

The Growing Need for *Fatwās* on Economic Issues

Islamic financial institutions began to emerge in Indonesia with the establishment of an Islamic banking institution called Bank Muamalat Indonesia (BMI) in 1992. This was made possible by the insertion of an article in the National Banking Law No. 7 of 1992 which stipulated that a banking system may be operated on the basis of profit sharing principle. Two years later, in 1994, an Islamic insurance company was established called Takaful Indonesia, and in 1997 an institution for Islamic capital market was created and began to operate. Each of these Islamic financial institutions had its own Islamic supervisory board to ensure the Islamicity of their products, which in turn triggered the need for the creation of the DSN at the national level in 1999 to provide with the uniformity of guidelines (through *fatwās*) on the legal status of various products and transactions in those newly established Islamic financial institutions.¹

The number of the Islamic financial institutions grew rapidly. Three Islamic banking institutions that had existed at the central level with some 84 branches in 2001 had increased to 11 institutions at the central level with some 1.215 branches throughout Indonesia in 2010. A similar rapid increase was true with the

Islamic banking units at the conventional banks whose number it was only three with 12 branches in 2001 had increased to 23 with 262 branches in 2010.² As of January 2012, the statistics showed further increase. The number of Islamic banking institutions at the central level rose to 12 institutions with some 1.435 branches throughout the country. The number of Islamic banking units at conventional banks increased to 24 units with 378 branches.³ The number of Islamic insurance companies also increased from 11 companies in 2003 to 42 in 2011. In the capital market, further development was noted: the creation of the Islamic capital market in 1997, followed by the creation of the Jakarta Islamic Index in 2002, whose membership rose to 30 companies in 2008.⁴ This rapid increase in the number of Islamic financial institutions at the central level and their branches in the provinces and districts throughout Indonesia had also increased the demand for more *fatwās* on a wider range of economic issues to ensure the compliance with Islamic legal principles. As mentioned earlier, by mid 2012 there were some 82 *fatwās* on economic issues issued by the DSN.

Fatwās on Banking

There are three *fatwās* on Islamic banking instruments issued by the DSN that apparently used the same argument, namely that on checking account (demand deposits), savings account, and time deposit. These *fatwās* did not mention of any specific letter of requests, but as they were issued in the early stages of the existence of the DSN created only in 1999, they must have been closely connected to the very reason for establishing the DSN itself namely an agreement among practitioners of Islamic financial institutions on the need for the creation of a national provider of *fatwās* on Islamic economic issues which was later discussed and adopted as the recommendation of a seminar of ulama on Islamic Bonds (Reksana Dana Syariah) held from 29-30 July, 1997. The first *fatwā* (*fatwā* no. 1/2000) declared that a checking account based on interest was *ḥarām* and it could become *ḥalāl* only if it was based on the principles of *mudārabah* and *wadi'ah*. The second *fatwā* (*fatwā* no. 2/2000) said that savings account based on interest was *ḥarām* and it could turn into *ḥalāl*

¹ M. Atho Mudzhar, *K.H. Ma'ruf Amin Seorang Ulama yang Cemerlang dalam Ilmu Hukum Ekonomi Syariah dan Motor Penggerak Ekonomi Syariah Indonesia*, An Inaugural Speech at the Ceremony of the Presentation of Honorary Doctorate Degree on Law of Islamic Economics to K.H. Ma'ruf Amin by the State Islamic University Syarif Hidayatullah, Jakarta, May 5, 2012 in Jakarta, p. 11.

² Muhammad Maksum, "Peran Fatwa DSN dalam Menjawab Perkembangan Produk Keuangan Syariah," in M. Asrorun Niam Sholeh (ed.), *Fatwa Majelis Ulama Indonesia dalam Sorotan*, (Jakarta, Majelis Ulama Indonesia, 2011), p. 566.

³ Bank Indonesia, *Statistics Perbankan Syariah*, Jakarta, Januari, 2012.

⁴ Yeni Salma Barlinti, *Kedudukan Fatwa Dewan Syariah Nasional dalam Sistem Hukum Nasional di Indonesia*, Unpublished Doctoral Dissertation, Faculty of Law, University of Indonesia, Jakarta, 2010, p. 128.

only if it was based on the principles of *mudārabah* and *wadi'ah*. The third *fatwā* (*fatwā* no. 3/2000) said that time deposits based on interest was *ḥarām* and it could be *ḥalāl* only if it was based on the principles of *mudārabah* and *wadi'ah*. Within the principles of *mudārabah* the owner of the account acts the *ṣāhib al-māl* and the bank as the *mudārib*, in which the *ṣāhib al-māl* may receive profit the proportion of which must be agreed upon at the time of the opening of the account (*ʿaqd*). Within the scheme of *wadi'ah*, there is no profit to be specified or agreed upon, but the bank may give the owner of the account a gift (*ʿaṭyā*).

Those three *fatwās* quoted the same Quranic verses namely surah al-Nisā' [4]: 29 on the prohibition of the consumption of wealth gained illegally with the exception of those gained through trades based on mutual consent, al-Baqarah [2]: 283 on the injunction to deliver up that which is entrusted to him to its owner, al-Mā'idah [5]: 1 on the injunction to fulfil one's obligations, and al-Mā'idah [5]: 2 on the injunction to help one another in furthering virtue and Godconsciousness. They also quoted three Hadiths narrated by al-Ṭabranī, Ibn Mājah, and al-Tirmidhī. Al-Ṭabranī was quoted to have narrated that 'Abbās ibn 'Abd al-Muṭālib, as he acted as a *ṣāhib al-māl*, used to put such conditions upon the *mudārib* as not to sail on the sea and not to buy cattle with the money he entrusted, to which Rasulullah apparently approved. Ibn Mājah was quoted to have narrated from Suhayb that Rasulullah said that there were three things that contained blessings: sale with differed payment (but without interest), *mudārabah*, and mixing wheat with millet (*shā'ir*) for household uses but not for sales. Al-Tirmidhī was quoted to have narrated from 'Amr ibn 'Awf that Rasulullah once said that agreements and conditions may be concluded in transactions except for forbidding what is *ḥalāl* and allowing what is *ḥarām*. Quoting Wahbah al-Zuhaylī in his *al-Fiqh al-Islāmī wa Adillatuh*, these *fatwās* also maintained that there was an *ijmā'* among the companions of the Prophet Muhammad to the effect that they had concluded *mudārabah* contracts between one another. Those *fatwās* also maintained that *mudārabah* was analogous to *musaqqah* (partnership in cultivating lands). Finally those three *fatwās* quoted an Islamic legal theory which said that every contract was originally lawful except when there was a reason (*dalīl*) to say the opposite.⁵

The above description showed that the DSN consistently applied the method of legal reasoning

based on the Quran, the Hadith, *ijmā'*, and *qiyās*, in that order; and finally, an Islamic legal theory was added to the argument.

Another set of examples of *fatwās* on Islamic banking issues are concerned with *murābahah* and Letter of Credit (LC). The *fatwā* on LC for import transactions was issued on September 14, 2002 (*fatwā* No. 34/2002) and that for export transactions was issued on the same day of 2002 (*fatwā* no. 35/2002). These *fatwās* were requested by the director of the Bank Muamalat Indonesia in his letter No. 150/2002 of July 11, 2002. Both *fatwās* stated that to be compliant with Islamic principles, the use of LC for import and export must be implemented under one of the following schemes: *wakālah bi al-ujrah*, *qarḍ*, *murābahah*, *salām/istisnā'*, *mudārabah*, *mushārahah*, and *ḥawālah*. In all cases, the amount of the profit of the bank must be agreed upon by both the bank and the LC holder in advance and specified in nominal and not in the proportional (percentage) terms.⁶

The legal reasoning used in both *fatwās* was the same, namely quotations of relevant Quranic verses and Hadiths of the Prophet, citation of the views of classical and modern ulama, and references to a number of Islamic legal theories as well as to relevant DSN's own previous *fatwās*. The Quranic verses quoted were surah al-Nisā' [4]: 29 on the prohibition of the consumption of wealth illegally with the exception of those gained through trades based on mutual consent, surah al-Mā'idah [5]: 1 on the injunction to fulfil one's obligations, surah al-Kahfi [18]: 19 on the story of the occupants of the cave as they asked one of them to go to the city with their silver coins, surah Yūsuf [12]: 55 on the story of Prophet Yūsuf's statement to the Egyptian King to make him a treasurer of the Kingdom, surah al-Baqarah [2]: 283 on the injunction to deliver up that which is entrusted to him to its owner, surah al-Qasas [28]: 26 on the story of the daughters of Prophet *Shu'ayb* who asked their father to hire Prophet Moses for a period of time to take care of their sheep, surah Yūsuf [12]: 72 on the promise of the Egyptian minister's servants to reward those who restore the missing King's cup with a camel load of food supply, surah al-Baqarah [2]: 275 stating that Allah has permitted trading and forbidden usury, and surah al-Ṣād [38]: 24 on the statement of Prophet Dawood that many partners in all walks of life are unjust to one another except for those who believe (in God) and do good works.

Both *fatwās* also quoted a number of Hadiths narrated by al-Ṭabranī, Ibn Mājah, 'Abd al-Razzāq,

⁵ M. Ichwan Sam (ed.), *Himpunan Fatwa Dewan Syariah Nasional MUT*, Revised Edition, 2006, jointly published by the MUI and the Central Bank of Indonesia, Jakarta, pp. 1-19.

⁶ M. Ichwan Sam, *Himpunan Fatwa*, pp. 204-226.

Abū Dāwūd, and al-Tirmidhī, and another Hadith by al-Tirmidhī. Al-Ṭabrānī narrated that ‘Abbās ibn ‘Abd al-Muṭālib, as he acted as *ṣāhib al-māl*, used to put conditions on the *muḍārib* such as not to sail to the sea or to buy cattle with the money he entrusted, to which Rasullullah apparently approved. Ibn Mājah narrated that the Prophet Muhammad once said that there were three things that contained blessings: sale with differed payment (but without interest), *muḍārabah*, and mixing wheat with millet (*shā’ir*) for household uses but not for sales. ‘Abd al-Razzāq (not recognized as one of the Hadith narrators) narrated that the Prophet Muhammad once ordained those who hired someone for work to make the reward or salary explicit in advance. Abū Dāwūd and al-Tirmidhī narrated that the Prophet Muhammad once submitted one Dinar to Ḥākim ibn Hizām to buy an animal for him. Al-Tirmidhī also narrated that the Prophet Muhammad once said that agreements and conditions may be concluded in transactions except for forbidding what is *ḥalāl* and allowing what is *ḥarām*.

Both *fatwās* also quoted a number of Islamic legal theories which said that every transaction was originally lawful except when there was a reason (*dalīl*) to say the opposite; that wherever you find *maṣlahah* (public interest) in a matter, it means the existence of God’s ordinance; that difficulties trigger some way out; that needs may take up the status of necessity; and that what is confirmed by the tradition is confirmed by the *Sharā’* (religious ordinance). Finally both *fatwās* made references to the views of Ibn Qudāmah, al-Sharakhṣī, and al-Zuhaylī who said that agents may be recruited with or without rewards, and to the view of al-Zuhaylī who argued that expenses to obtain certain goods may be included into the whole price of the goods. References were also made to the DSN’s previous *fatwās* on *ijārah*, *qard*, *murābahah*, *muḍārabah*, *salām/istisnā’*, *mushārahah*, and *ḥawālah*, individually.⁷

The legal reasoning for both *fatwās* was certainly very meticulous. They quoted nine Quranic verses, five Hadiths, five Islamic legal theories, and made references to three wellknown classical and modern ulama. However, there was no reference to *ijmā’* nor *qiyās*, but go straight to the views of the ulama. For this, the DSN has introduced a new method called *i’ādah al-nazar* to be discussed later.

A similar line of legal reasoning was also applied to the DSN’s *fatwā* on Charged Card issued on May 27, 2004. The *fatwā* referred to a number of Quranic verses, Hadiths, Islamic legal theories, and some classical books of *fiqh*. No mention was made of *ijmā’* and *qiyās*.

Fatwās on Capital Market

Fatwās of the DSN on capital market are concerned with two main instruments: investment and bonds, to each of which the DSN has issued more than one *fatwā*. The first *fatwā* on investment was issued on 18th of April 2001 (*fatwā* no. 20/2001) in which it was said that capital investment may be carried out in compliance with Islamic principles if it is designed under *muḍārabah* scheme in which the investors are the *ṣāhib al-māl* and the investment managers are their agents (*wakīl ṣāhib al-māl*). Profits are to be distributed to the investors based on the agreement between the investors and the investment managers. The *fatwā* also laid down conditions, rules, and procedures in detail as how to stay compliant with Islamic principles. The *fatwā* quoted more or less the same Quranic verses and Hadiths that had been quoted for those *fatwās* on checking account, saving account, and time deposit discussed earlier. On October 4, 2003, another *fatwā* was issued (*fatwā* no. 40/2003) on capital market. It was not clear why the DSN found it necessary to issue the *fatwā* to the same effect and argument while the earlier one was already available. It was probably because in 2003 the DSN just signed a Memorandum of Understanding (MOU) with the capital market authorities on the implementation of investment under Islamic principles. The *fatwā* also made a reference to recommendations of a seminar on Islamic bonds held from 14 to 15 March, 2003 in Jakarta.⁸

Another group of *fatwās* on capital market is concerned with bonds. On September 14, 2002, the DSN issued a *fatwā* (*fatwā* no. 32/2002) to the effect that conventional bonds based on interest are forbidden in Islam. Bonds may be undertaken to comply with Islamic principles if they are based on profit sharing which may be undertaken under the schemes of *muḍārabah*, *mushārahah*, *murābahah*, *salām*, *istisnā’*, and *ijārah*. The *fatwā* was issued in response to the letter of a security company PT. AAA Sekuritas No. Ref: 08/IB/VII/02 of July 5th, 2002 requesting a *fatwā* on Islamic bonds (Obligasi Syariah). The argument for the *fatwā* consists of references to a number of Quranic verses (surah al-Mā’idah [5]: 1, al-Isrā’ [17]: 34, and al-Baqarah [2]: 275), two Hadiths (one is narrated by al-Tirmidhī and the other by Ibn Mājah mentioned earlier), and four Islamic legal theories. No *ijmā’* or *qiyās* was mentioned. On the same day, the DSN also issued another *fatwā* on bonds (*fatwā* no. 33/2002) under a special scheme of *muḍārabah* to the effect that such a scheme is in compliance with Islamic principles as the holders (buyers) of bonds act as the *ṣāhib al-māl* and

⁷ M. Ichwan Sam, *Himpunan Fatwa*, pp. 204-226.

⁸ M. Ichwan Sam, *Himpunan Fatwa*, pp. 107-118 and 259-273.

companies issuing the bonds as the *mudārib*. The *fatwā* also made reference to a previous *fatwā* no. 7/2000 on simple *mudārabah* (*qirād*) transactions. The Quranic verses, Hadiths, and Islamic legal theories referred to are also the same with those in the previous *fatwā* (*fatwā* no. 32/2002) with an additional reference to *ijmā'* and the views of classical and modern ulama. On March 4, 2004, again another *fatwā* on bonds (*fatwā* no. 41/2004) was issued in response to a letter of the PT. Mandiri Sekuritas No. 062/MS/DIR/II/04 requesting a *fatwā* on Islamic bonds based on *ijārah* scheme. As requested, this time the *fatwā* was concerned with bonds only under *ijārah* scheme. The reason being that the previous *fatwā* on bonds with *mudārabah* scheme was not adequate to respond to other possibilities of selling bonds within the Islamic principles.⁹

The above description shows that in these *fatwās* on capital market, the DSN consistently referred to some relevant Quranic verses and Hadiths as well as to Islamic legal theories; only on occasions reference was made to *ijmā'*, *qiyās*, and the views of classical and modern ulama.

Fatwās on Insurance

There are at least four *fatwās* on insurance issued in 2001 and 2006. The first *fatwā* was issued on October 17, 2001 (*fatwā* no. 21/2001) and it was on Islamic insurance in general (*tāmīn*, *takāful*, or *tadammun*). The *fatwā* did not refer to any letter of requests, but to questions among general public on the legal status of insurance. It says that insurance may be in compliance with Islamic principles if it is undertaken under the scheme of *tijārah* or *tabarru'*. Under the *tijārah* scheme, the insurance company acts as the *mudārib* and the customers act as the *ṣāhib al-māl*. In the *tabarru'* scheme, the insurance company is an agent (*wakīl*) that receives gifts and donations from the customers to help one another in case of risk or need. The *fatwā* based itself on a number of arguments: citations of relevant Quranic verses, references to a number of Hadiths, and quotations of some Islamic legal theories.

The Quranic verses cited are surah al-Ḥashr [59]: 18 on the injunction to the believers to look to what the soul offers for tomorrow, surah al-Mā'idah [5]: 1 on the injunction to fulfil one's promises and agreements, surah al-Nisā' [4]: 58 on the injunction to hand back your trusts to their rightful owners, surah al-Mā'idah [5]: 90 on the prohibition of wine, gambling, idols, and divining arrows, surah al-Baqarah [2]: 275 on the lawfulness of trade and the prohibition of *ribā*, surah al-

Baqarah [2]: 278 on injunctions to the believers to give up what is still due to you from usury, surah al-Baqarah [2]: 279 on injunction to deal not unjustly so that you shall not be dealt with unjustly, surah al-Baqarah [2]: 280 on injunction to grant a delay on debtor who is in hard time or to remit the debt as alms, surah al-Nisā' [4]: 29 on the prohibition of consumption of wealth illegally except for trades based on mutual consent, and surah al-Mā'idah [5]: 2 on injunction to help one another to do good deeds. The Hadiths quoted are narrated by Muslim, al-Tirmidhī, al-Bukhārī, and Ibn Mājah. Muslim was quoted to have narrated a Hadith from Abū Hurayrah saying that whoever helps release the burden of another Muslim in this world he will be released from his burden in the hereafter; another Hadith from Nu'mān ibn Bashīr that the relationship among the believers is like a body where an infection on part of it is felt by the whole system of the body; still another Hadith from Abī Mūsā which says that the believers are like a concrete building that each part supports another, and another Hadith saying that the Prophet forbids any element of uncertainty in trades. Al-Tirmidhī was quoted to have narrated from 'Amr ibn 'Awf saying that Muslims are bound by conditions and agreements they have concluded except when they are making something lawful to be unlawful or the opposite. Al-Bukhārī narrated two Hadiths, first is that every deed depends on the intention of the doers, and secondly that the best person is the one who is prompt in paying debts. Ibn Mājah was quoted to have narrated a Hadith saying that one should not endanger nor be endangered by others. Finally the *fatwā* made references to three Islamic legal theories: that every transaction is originally lawful except when there is a reason (*dalīl*) to say the opposite, that difficulties should be avoided by all possible means, and that dangers should be eradicated.¹⁰

The remaining three *fatwās* are basically the elaboration of the first one. The second *fatwā* (*fatwā* no. 51/2006) elaborates how Islamic insurance is possible under the scheme of *mudārabah al-mushtarakah* in which a number of customers as a group act as the *ṣāhib al-māl* and the insurance company as the *mudārib*. The third *fatwā* (*fatwā* no. 52/2006) elaborates how Islamic insurance and reinsurance are possible under the scheme of *wakālah bi al-ujrah* where the insurance company acts as the agent (*wakīl*) while the customers as the *ṣāhib al-māl*. The fourth *fatwā* (*fatwā* no. 53/2006) elaborates how Islamic insurance and reinsurance are possible under the scheme of *tabarru'* where the customers donated some amount of money to the insurance company as an agent to manage the

⁹ M. Ichwan Sam, *Himpunan Fatwa*, pp. 189-195, 196-203, and 274-290.

¹⁰ M. Ichwan Sam, *Himpunan Fatwa*, pp. 119-131.

money and distribute it to those in need most or at risk. These three *fatwās* did not mention any letter of request for it, but admitted that it was an elaboration and an evaluation of the applicability of the DSN's *fatwā* No. 21/2001 on the legal status of insurance in general. The argument put forward in these three *fatwās* is basically similar to that of the first, except for some additional references to certain works of classical and modern ulama.¹¹

The above description once again shows that the DSN is consistent in its reference to the Quran and Hadiths, but not to *ijmā'* and *qiyās*. Additional references are occasionally made to the works or views of some classical as well as modern ulama. At times analogical analysis is clearly identifiable, but not necessarily *qiyās*. *Qiyās* is defined as an analogy between new cases with no legal status with *naṣ* (the text of the Quran or Hadith) explaining the legal status of a particular case with some resemblance in the '*illah*'. Analogical analysis may also take the form of comparing new cases with no legal status with other new cases already given the legal status by the ulama, which in the tradition of the Bahsul Masa'il of the Nahdlatul Ulama called "*ilhāqī* analysis". The exercise of the analogy both in the forms of *qiyās* or *ilhāqī* analysis may be called the revitalization of the *taḥqīq al-manāt* which will be discussed later.

It is worth noting at this junction that *fatwā* of the DSN on insurance is in contradiction to that of the al-Majma' al-Fiqhī al-Islāmī (no. 55 decided upon in the Tenth Session) on the prohibition of all kind of commercial insurances, including life insurance. The *fatwā* said that the only permissible insurance was the *ta'āwunī* insurance (under *tabarru'* scheme). The Majma' listed a number of arguments for the prohibition of the insurance. First, that all commercial insurances contain elements of *gharār*, since both the insurance company and the insured person do not know when they should end the contract. Secondly, both the insurance company and the insured person at the time of signing the contract also do not know how much money the insured person should pay, while in some cases a person gets all the benefit having paid only one instalment. Thirdly, commercial insurances contain *ribā al-fadal* and *ribā al-nasa'*, since an insurance company may pay the benefit more than the amount it receives from the insured party. Fourthly, commercial insurances contain elements of the absence of reciprocity, as one party may take more than what he has paid.¹²

The *fatwā* of the DSN on insurance is also in contradiction to the view of al-Zuhaylī, a modern scholar, who holds the view of the impermissibility of commercial insurance (*al-tāmin bi qast thābit*) after quoting the *fatwā* of Ibn 'Abidīn on the prohibition of *tāmin al-bahri* (literally shipping insurance).¹³ This shows that a *mufti* of modern time may actually reject a conventional economic scheme without feeling being left behind of economic advancement.

Fatwās on Pawn

There are two *fatwās* on pawn, the first was issued on March 28, 2002 (*fatwā* no. 25/2002), and the second was issued on March 6, 2008 (*fatwā* no. 68/2008). The first *fatwā* was issued in response to the DSN's own evaluation on the need of Islamic financial institutions for guidelines on the issue, while the second *fatwā* was issued as a response to a request by the state owned pawn company in its letter No. 186/US.1.00/2007. The first *fatwā* says that it is lawful to borrow some money with a pledge (fiduciary) on conditions that the lender (*murtahin*) keeps the fiduciary article (*marhūn*), although the right of ownership remains to the borrower (*rāhin*). The *murtahin* does not have the right to use the *marhūn* without the permission of the *rāhin*. However, expenses for keeping the *marhūn* by the *murtahin* are the responsibility of the *rāhin*. If for some reasons the *rāhin* cannot pay up his debt, the *murtahin* may sell the *marhūn* to cover the debt and all expenses of keeping and selling it. The difference is for the *rāhin*.

The argument put forward in the *fatwā* is a reference to only a Quranic verse, three Hadiths, an *ijmā'*, and an Islamic legal theory. The Quranic verse quoted is from surah al-Baqarah [2]: 283 on the possibility of using a pledge if you are on a journey wanting to make a contract of debt with one another but cannot find a scribe to write down the document. The first Hadith quoted is narrated by al-Bukhārī and Muslim from 'Ā'ishah who says that the Prophet Muhammad once made a contract of debt for food with a Jew with a pledge of his military coat. The second Hadiths is narrated by al-Dāruqūṭnī and Ibn Mājah from Abī Hurayrah that the Prophet Muhammad once said that the title, the use, and the risk of the fiduciary article remains with the owner. The third Hadith is narrated by Muslim and al-Nasai from the community of Muslims who says that the Prophet said that an animal on a pledge is upon the owner to bear all the expenses of riding it, milking it, and feeding

¹¹ M. Ichwan Sam, Himpunan Fatwa, pp. 374-414.

¹² Al-Majma' al-Fiqhī al-Islāmī, *Qarārāt al-Majma' al-Fiqhī al-Islāmī 1977-2010*, Rabīṭah al-'Alam al-Islāmī, third edition, Mecca, 2012, pp. 35-37. The decision of the fatwa was made based on the majority view

of the members of the Majma', except for Shaykh Mustafā al-Zarqā who disagreed with the decision.

¹³ Wahbah al-Zuhaylī, *al-Fiqh al-Islāmī wa Adillatuh*, Vol. IV, (Damascus: Dār al-Fikr, 1984), pp. 441-445.

it. The *fatwā* also said that there was an *ijmā'* on the permissibility of making contract of debt with a pledge. Finally an Islamic legal theory is quoted in the *fatwā*, which says that every transaction is originally lawful unless there is a reason (*dalīl*) to make it the opposite.¹⁴

The second *fatwā* on pawn says that the pledged article does not need to be handed over to the *murtahin*; only the official prove of the ownership of the article is to be handed over to the *murtahin*. Thus, all risks and expenses created by the article are to be borne by the owner. This is called "*rahn tasjīlī*" and it is compliant with Islamic principles. The argument put forward in this *fatwā* is the same with that put forward in the previous *fatwā* in its references to Quranic verses, Hadiths, *ijmā'*, and Islamic legal theories.¹⁵

Examination of the Legal Reasoning

Mention has been made that the *fatwās* of the DSN have been consistent in making references to relevant Quranic verses and Hadith narrations, in that order. This shows the *manhaj al-istinbāt* that the DSN follows. This was also admitted by the Chairman of the DSN, K.H. Ma'ruf Amin. But he further explained that this was not all. Two other steps must also be followed in order, namely to consult, if there was any, *ijmā'* of ulama on the issue being discussed and to make analysis if there was any analogical parallelism between the new issue being discussed with those already mentioned in the *nusūṣ al-shar'iyyah*: the Quran or Hadith. Ma'ruf Amin emphasized that the reference to the *nusūṣ al-shar'iyyah* was highly important, because if a *mufti* or an *'ālim* or an institution of *fatwā* issued a *fatwā* only on the basis need (*li al-ḥājah*), or public interest (*li al-al-maṣlahah*), or the understanding of the goal of the Sharia (*maqāṣid al-sharī'ah*), without consulting to the *nusūṣ al-shar'iyyah*, he went beyond the boundary (*ifrātī*). Conversely, Ma'ruf Amin said that if a *mufti* stood fast only to the *nusūṣ al-shar'iyyah* without trying to understand the public interest (*al-maṣlahah*) and the goal of the Sharia (*maqāṣid al-sharī'ah*) resulted in leaving new cases unanswered, he was inconsiderate (*tafrītī*). In other words, the *maṣlahah* and the *maqāṣid al-sharī'ah* are called upon only after the exhaustion of the previous four steps of scrutiny namely the Quran, Hadith, *ijmā'*, and *qiyās*, in that order.¹⁶

A question arises as how if the *nusūṣ al-shar'iyyah* do not mention anything or do not mention explicitly

about the issue being discussed, while *ijmā'* and *qiyās* are also absent on the issue? The DSN offers three alternate steps, while keeping in mind the concept of *al-maṣlahah* and the *maqāṣid al-sharī'ah* at the same time. The first is the revitalization of the concept of *taḥqīq al-manāṭ*. The DSN emphasized on the term "revitalization" for the concept of *taḥqīq al-manāṭ* itself is nothing new and already developed by classical scholars. In this context, Ma'ruf Amin, the chairman of the DSN, admitted that he had borrowed the concept from the definition developed by al-Āmidī in his work entitled *al-Iḥkām* in which he defined *taḥqīq al-manāṭ* as an analysis to scrutinize the existence of legal causes or reasons (*'illah*) in a new case after having understood that such legal causes or reasons (*'illah*) have been mentioned either in the *nusūṣ al-shar'iyyah*, or *ijmā'*, or *istinbāt*.¹⁷ The assumption is that for every rule in the Quran and Hadith, apart from ritual issues, there must be an *'illah* attached to it. Therefore, one way of responding to the legal status of new cases is by applying the concept of *taḥqīq al-manāṭ*, in this case the revitalization of it.

Secondly, the DSN offers the concept of *i'ādah al-naẓar* (reassessment analysis). According to Ma'ruf Amin, this concept is important to preserve the relevance of Islamic teachings to new arising cases. Ma'ruf Amin defined *i'ādah al-naẓar* as an effort to reassess or evaluate the views (*aqwāl*) of classical ulama which, for some reasons, might be difficult to implement today (*ta'assur* or *ta'azzur* or *shu'bah al-'amal*). Ma'ruf Amin quoted a statement by al-Qarāfi who had said that the attitude of standing fast only by the texts of the classical ulama was an astray in itself and a sign of misunderstanding of the goals of the classical ulama.¹⁸ One of the ways of applying the concept of *i'ādah al-naẓar* is by lifting up an old and unpopular view of the classical ulama (*qawl al-marjūh*) to become the most appropriate today (*qawl al-mu'tamad*), because of some new Illat detected in it. The most popular old view (*qawl al-mu'tamad*) in the past could have diminished its relevance today. This shows the dynamics of Islamic legal exercise applied by the DSN, because it may shift a *marjūh* view of the past into a *mu'tamad* today and a *mu'tamad* of the past into a *marjūh* today.¹⁹ *Fatwās* on Letter of Credit and Charged Card are claimed to be some examples of the application of the concept of *i'ādah al-naẓar*.

Thirdly, the DSN offers the concept of *tafriq al-ḥalāl min al-ḥarām* (sorting out what is *ḥalāl* and separate it from what is *ḥarām*). The theory is that when something *ḥalāl* is mixed with something *ḥarām*, then the whole

¹⁴ M. Ichwan Sam, *Himpunan Fatwa*, pp. 146-151.

¹⁵ M. Ichwan Sam, *Himpunan Fatwa Dewan Syariah Nasional Indonesia Volume II*, jointly published by the MUI and the Central Bank of Indonesia, Jakarta, 2010, pp. 160-165.

¹⁶ Ma'ruf Amin, *Fatwa Dalam Sistem Hukum Islam*, (Jakarta: Elsas Publishers, 2008), p. 246.

¹⁷ Ma'ruf Amin, *Fatwa Dalam Sistem*, p. 253.

¹⁸ M. Atho Mudzhar, *KH Ma'ruf Amin Seorang*, p. 5.

¹⁹ Ma'ruf Amin, *Fatwa Dalam Sistem*, p. 264.

thing becomes *ḥarām*. With the concept of *tafrīq al-ḥalāl min al-ḥarām*, the validity of the theory may now be evaluated. The validity of the theory is based on an assumption that the mixture is inseparable in character. In the case of money, however, the separation between the *ḥalāl* and the *ḥarām* is possible, because money (bank notes) is not *ḥarām* by the substance (*‘ayniyyah*) but by the way it was gained (*kasbiyyah*). Therefore, it is possible for a conventional bank to separate the amount of its *ḥalāl* money (gained through offering services to the customers) from the *ḥarām* one (gained through imposing interests on loans). Once the separation is done, the conventional bank may use the *ḥalāl* money for investment in Sharia (Islamic) economy including to establish and operate an Islamic (Sharia) bank.²⁰

It might be worth noting here that many transactions suggested by the DSN *fatwās* are using multiple *‘aqds* (*al-‘uqūd al-murakkabah*) the impermissibility of which has been declared by some Hadits. Indeed, *fuqahā’* and *muftis* have always tried to find ways to get around it. In most cases they are successful in finding the right combination of contracts for a single transaction, but often they went so far that they lost the sight of the boundary. The issue at stake here is legality versus morality. This is the problem; some of the multiple *‘aqds* are forbidden in Islam, although the individual *‘aqd* constituting those multiple *‘aqds* may be lawful when it stands alone.²¹

Identification of Socio-Legal Impacts

Fatwās are Islamic legal opinions on the one hand, and on the other hands they are also rules and laws in their own right. As rules, then, *fatwās* can be studied from a sociological point of view. In sociology, rules and laws are product of social changes and at the same time they are also having impacts on social changes. Now it is time to turn to the second task of this paper namely the examination of the socio-legal impact of the *fatwās*, especially on how the *fatwās* of the DSN have been adopted by or absorbed into laws and government regulations. Only a few *fatwās* will be examined here by way of examples. After all we have mentioned only some 17 out of 82 *fatwās* the DSN has issued. In this context, Barlinti has undertaken a thorough study on the issue and some of her findings will be presented here.²²

²⁰ Ma'ruf Amin, *Era Baru Ekonomi Islam: Dari Fikih Ke Praktek Ekonomi Islam*, Elsas Publishers, Jakarta, 2011, pp. 43-46.

²¹ For the discussion of the legal status of multi *‘aqds*, see Hasanuddin, *Konsep dan Standar Multi Akad dalam Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI)*, unpublished doctoral dissertation, The State Islamic University Syarif Hidayatullah, Jakarta, 2008, pp. 65-74.

²² Yeni Salma Barlinti, *Kedudukan Fatwa*, pp. 199-400.

Barlinti's study found that the status and roles of the DSN's *Fatwās* could be identified in four areas. First, they constitute guidelines of the principles of Islamic economy for the general Muslim public; secondly, they constitute the guidelines for the member of Sharia Advisory Boards (Dewan Pengawas Syariah abbreviated as the DPS) attached to every Islamic financial institution to ensure the compliance with Islamic principles; thirdly, they constitute guidelines for the management of Islamic financial institutions to ensure that their products and services are compliant with Islamic principles; and fourthly, they constitute guidelines to be adopted by and absorbed in various laws and government regulations.²³

As guidelines for the public, the *fatwās* of the DSN are widely read in the media and studied by scholars.²⁴ At times some people are making references to those *fatwās* as they undertake their daily business transactions. Adlin Sila found that the impact of the DSN's *fatwās* is felt strongly among micro financial institutions in the villages.²⁵ The growing number of Islamic banks and other financial institutions in the last decade is an indication of the influence of the DSN's *fatwās* in providing guidelines on Islamic economic principles for the management of those institutions.

To ensure that the *fatwās* of the DSN function as the guidelines for the members of the DPS, the Islamic Advisory Boards attached to every Islamic financial institution, four steps have been agreed upon among Islamic economic community. First, for the recruitment of the members of the board, an Islamic financial institution needs recommendations of the DSN. Secondly, it has been agreed that the DPS prospective members must have training certificates from the DSN to ensure the adequacy of their understanding of Islamic economic principles. Thirdly, DPS members are expected to inform the DSN every semester on advises they have offered to the management and on problems

²³ Yeni Salma Barlinti, *Kedudukan Fatwa*, pp. 485-6. Barlinti speaks only of the status of fatwas, the additional term "roles" is my own since roles are the active forms of status.

²⁴ See, for example, M. Asrorun Ni'am, *Sadd al-Dzari'ah dan Aplikasinya dalam Fatwa Majelis Ulama Indonesia*, unpublished doctoral dissertation, State Islamic University Syarif Hidayatullah, Jakarta, 2008; Muhammad Taufiki, *Penerapan Konsep Ijtihad Tatbiqi al-Syatibi dalam Fatwa MUI: Kajian Terhadap Fatwa Tahun 1997-2007*, Unpublished Doctoral Dissertation, State Islamic University Syarif Hidayatullah Jakarta, 2008; Asrorun Ni'am (ed.), *Fatwa Majelis Ulama Indonesia dalam Sorotan*, Majelis Ulama Indonesia, Jakarta, 2011; and H. M. Atho Mudzhar and Choirul Fuad Yusuf, et al, *Fatwa Majelis Ulama Indonesia (MUI) Dalam Perspektif Hukum dan Perundang-Undangan*, (Jakarta, Badan Litbang dan Diklat Kementerian Agama RI, 2012).

²⁵ Muhammad Adlin Sila, *Institusionalisasi Syariah pada Lembaga Keuangan Mikro (LKM): Studi Sosiologis BMT Di Cipulir dan BQ Di Banda Aceh*, Unpublished Doctoral Dissertation, Faculty of the Social Sciences and Politics, University of Indonesia, 2009, pp. 229.

they are facing in their financial institutions. Fourthly, DPS members are invited to annual meetings organized by the DSN for an update on recent *fatwās*.²⁶

On the adoption of the *fatwās* by laws and government regulations, Barlinti found that the Regulation of the Central Bank no. 7/46/PBI/2005 had fully adopted the *fatwās* of the DSN no. 1, 2, and 3 of 2000 discussed earlier, as well as *fatwās* no. 7/2000 and 15/2000. The Regulation of the Central Bank said that checking and saving accounts might take the forms of the transactions of *muḍārabah* or *wadi'ah*. In the *muḍārabah* transaction, the articles 4 and 5 of the Regulation say that the bank acts as the *muḍārib* and the customers act as the *ṣāhib al-māl*, while the profit must be specified in advance based on proportions agreed upon by both the *ṣāhib al-māl* and the *muḍārib*. In the *wadi'ah* transaction, article 3 of the Regulation says that the money of the customers is a deposit that can be withdrawn any time and no profit or gift can be promised in advance. On time deposit accounts, article 5 of the Regulation says that it must take the form of the transaction of *muḍārabah* where the customers are the *ṣāhib al-māl* and the bank is the *muḍārib*, while the profit is based on proportions agreed upon by the *muḍārib* and the *ṣāhib al-māl* in advance at the time of the opening of the account.²⁷

The Regulation of the Central Bank no. 7/46/PBI/2005 has also adopted the *fatwā* of the DSN no. 7/2000 on credit or financing. Article 6 of the Regulation says that in the case of credit or financing under the scheme of *muḍārabah*, the bank acts as the *ṣāhib al-māl* and the customers act as the *muḍārib*. All conditions and rules as laid down in the *fatwā* no. 7/2000 is adopted in the article. Article 9 of the Central Bank Regulation on financing has adopted the *fatwā* of the DSN no. 4/2000 on *murābahah* scheme, where all rules and conditions laid down in the *fatwā* were incorporated into the article including the introduction of the concept of *wakālah*. Article 15 of the Central Bank Regulation stipulates that financing can also be based on the scheme of *ijārah* where all rules and regulation laid down by the *fatwā* of the DSN no. 9/2000 are adopted.²⁸ The use of the terms and concepts of *muḍārabah*, *wadi'ah*, *wakālah*, and *ijārah* in the Central Bank Regulation is a proof of the socio-legal impact of the *Fatwās* of the DSN.

Indeed, the most important adoption of Islamic

economic principles was marked by the promulgation of the Law no. 21 of 2008 on Sharia (Islamic) Banking. Initially the application of Islamic banking in Indonesia was based only on a very short phrase included in the Law No. 7 of 1992 on Banking in which it was stated that banks might operate under “the principle of profit sharing”, without qualifying what was meant by the phrase. The term “profit sharing” was also included in the law as an alternative to interests in credit payments.²⁹ Later, in the Government Regulation No. 72 of 1992 the phrase “the principle of profit sharing” was defined as profit sharing based on the Sharia in determining the amount of profit for the bank. Subsequently, in the Law No. 10 of 1998, the phrase used was changed into “banking based on the principles of Sharia,” which was qualified in the Article 1.12 of the Law to mean in accordance with the Sharia based transactions such as *muḍārabah*, *mushārahah*, *murābahah*, and *ijārah*. In the Law no. 21 of 2008, the phrase “banks (operating) based on Sharia principles” was further changed into simply “Sharia banking” and the term “Sharia principles” was defined to mean “the principles of Islamic law on banking activities based on *fatwās* issued by institutions with authorities of issuing *fatwās* on Sharia.” In the Article 26 of the Law no. 21 of 2008 it was further qualified that the institution with the authorities of issuing *fatwās* was the Majelis Ulama Indonesia (the MUI), the Council of Indonesian *Ulama* of which the DSN is a part.³⁰

Barlinti also goes to a great detail in proving the influence of the *fatwās* of the DSN on government regulations on capital market. Suffice it to say that the Decree of the Board of Investment of the Ministry of Treasury No. 130/BL/2006 has all the spirit and procedures to comply with Islamic principles. In the Article 1 of the decree it is stipulated that Islamic principles on capital market here are defined as the principles of Islamic law on activities of capital market based on the *fatwās* of the DSN that have been adopted by the decree, or are not in contradiction to the decree or other government regulations.³¹

On the adoption the *fatwās* of the DSN by government rules on insurance, Barlinti found that the nature was slow and incremental. Islamic insurance

²⁶ M. Atho Mudzhar, *K.H. Ma'ruf Amin Seorang*, pp. 20-21.

²⁷ Yeni Salma Barlinti, *Kedudukan Fatwa*, pp. 209-211. Please note that the Central Bank Regulations uses the terms *muḍārabah*, *wadi'ah*, *ṣāhib al-māl*, and *muḍārib* in its phrases.

²⁸ Yeni Salma Barlinti, *Kedudukan Fatwa*, pp. 212-214, 219-220, and 231-232. Barlinti goes on and on to prove the similarities of the content of each article on banking of the Central Bank Regulation with that of various *fatwas* of the DSN.

²⁹ It is worth noting that Adlin Sila found that the principle of revenue sharing was common practice both in Cipulir and Banda Aceh in land cultivation partnership. In fact, according to Adlin Sila, they had been two laws promulgated on the issue namely Law No. 2 of 1960 and Law No. 16 of 1964, in both of which stipulations were made on contracts of revenue sharing on agricultural cultivation partnership and fishery. See Muhammad Adlin Sila, *Institusionalisasi Syariah*, pp. 227-228.

³⁰ Yeni Salma Barlinti, *Kedudukan Fatwa*, pp. 203-205, and 244.

³¹ Yeni Salma Barlinti, *Kedudukan Fatwa*, p. 302.

is probably the least regulated. Mention of Islamic principles on insurance is made here and there, but nothing is comprehensive. However, the DSN was able to get around it by reaching an agreement with the government that every permit for the establishment of an Islamic insurance company should carry with it a condition to also create an Islamic advisory board and the recruitment of its members should have the recommendation of the DSN. With this agreement, the DSN was able to ensure that all new Islamic insurance companies will comply with Islamic principles. This was later strengthened by the inclusion of Article 3 in the Decree of the Minister of Treasury No. 422/KMK.06/2003 which said that the promotion of every product of Islamic insurance companies had to have endorsement of the DSN.³²

The above discussion has shown that the *fatwās* of the DSN have been adopted in full or in part by various government regulations. Some government regulations secure themselves by saying that all *fatwās* of the DSN be consulted by all Islamic economic financial institutions in their business. The chairman of the DSN, K.H. Ma'ruf Amin, claimed that by June of 2011, some 43 *fatwās* of the DSN had been adopted in full by various government regulations.³³

Some Concluding Remarks

The above discussion has shown that the *fatwās* of the DSN have been issued in response to the need of Indonesian society for guidelines in Islamic economic principles. The triggers for the issuance of those *fatwās* are often in the forms of letters of requests by individual companies or observations of the DSN itself on the growing concern and need in society. In terms of their argument, those *fatwās* are strongly supported by the *nuṣūṣ al-shar'iyyah* as shown by their consistent references to the Quran and Hadith. They also follow a system of *istinbāt* (*manhaj al-istinbāt*) that has been established by the majority of ulama (*Jumhūr al-'ulamā'*) as shown by their consistent references to *ijmā'* and *qiyās* whenever available after references to the Quran and Hadith. Only when *ijmā'* and *qiyās* are not available, they go further to check the issues discussed in the works and views of classical and modern ulama. It is worth noting that references to Islamic legal theories are always made regardless of the existence of *ijmā'* or *qiyās*. There have been no efforts in this paper to identify the possible influence of some socio-political factors on the substance of those *fatwās*, but one thing is clear that

those *fatwās* are meant to provide with some guidelines for Muslims to respond to new developments in the field of economy. Indeed, the Muslims are the ones who are served most by those *fatwās*, but since the customers of Islamic financial institutions may come from Muslims and non-Muslims alike, those *fatwās* may in the end serve to promote an alternative economic system to the one developed by the conventional system thus far.

The problem is that the DSN is too anxious to offer "confirmation" to every conventional banking instrument, which may lead it to play too much of a *ḥīlah* (legal stratagem) in its *fatwās*. In most cases the DSN had to bring a number of Islamic schemes together (*al-'uqūd al-murakkabah* or multiple contracts) to form an alternative to a single conventional banking instrument. This could be a risky exercise, because it may easily fall into the warnings of the Prophet Muhammad on the prohibition of such a practice, although the individual scheme constituting the *al-'uqūd al-murakkabah* might be lawful. The issue at stake here is legality versus morality, where one is offering something seemingly and outwardly legal but morally it is merely offering approvals to every existing economic instrument championed by the conventional banking system. Indeed, the Prophet Muhammad was very accurate when he indicated that the function of a whole is not the sum of its parts. But this question of legality versus morality in the DSN's *fatwās* is a subject of further studies.

The impact of the DSN's *fatwās* on social change has been vividly identifiable. The theory in the sociology of law that law is an instrument of social engineering is proven to be true, especially when the law is formulated and extracted from the existing social norms. The principle of profit or revenue sharing had already been implemented in many transactions by Indonesian society, long before the *fatwās* of the DSN were issued. Therefore, once the *fatwās* of the DSN on Islamic economic issues based on the principle of profit sharing were issued, they were readily acceptable by the society. The general public accepted them as guidelines in their daily business dealings. The members of Islamic advisory boards and the management of Islamic financial institutions are even taking those *fatwās* more seriously. Furthermore, some laws and government regulations have adopted the DSN's *fatwās* in their rulings. These are indeed the direct impacts of those *fatwās* which in turn will have trickle down effects on the society at large, including on informal and micro economic institutions. But this also needs further studies. []

³² Yeni Salma Barlinti, *Kedudukan Fatwa*, pp. 277-85.

³³ M. Atho Mudzhar, *K.H. Ma'ruf Amin Seorang*, p. 16. See also K.H. Ma'ruf Amin, *Era Baru Ekonomi*, pp. 186-89.

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