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Sharia Legal Perspective on Joint Property Transactions: An Analysis of DSN-MUI Fatwa No. 160/DSN-MUI/VII/2024 on *Ijārat al-Māl al-Mushtarak* and *Al-Māl al-Mushā*

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Abstract: This study analyzes the juridical issues embedded in Fatwa No. 160/DSN-MUI/VII/2024 concerning *Ijarah al-māl al-mushtarak* and *al-māl al-mushā'*, particularly the provision permitting one partner to lease a jointly owned asset share to another partner without obtaining the consent of the remaining partners. The study employs a qualitative case study approach by examining the Fatwa's normative framework, the principles of *fiqh mu'āmalāt*, and their implications for Islamic financial industry practices. The findings reveal that removing the inter-partner consent requirement could create uncertainty about ownership rights, conflicts of interest, and harm to other parties, thereby opening the possibility of *ḍarar*. This condition is analyzed through the legal maxim *al-ḍararu yuzālu* and the *Sadd al-dharā'i'* approach, both of which emphasize preventing potential harm before it occurs. Theoretically, this study argues that the identity of the lessee (whether a partner or a non-partner) does not eliminate the obligation to obtain consent, as ownership rights in *mal mushā'* are inherently attached, collective, and proportionally vested in each party. Accordingly, this study recommends making inter-partner consent mandatory in Ijarah al-māl al-mushtarak to ensure transparency, accountability, legal certainty, and justice in transactions and within the Islamic financial industry.

Abstrak: Studi ini menganalisis isu-isu yuridis yang terkandung dalam Fatwa No. 160/DSN-MUI/VII/2024 mengenai *Ijarah al-māl al-mushtarak* dan *al-māl al-mushā'*, khususnya ketentuan yang mengizinkan satu mitra menyewakan saham aset yang dimiliki bersama kepada mitra lain tanpa mendapatkan persetujuan dari mitra lainnya. Penelitian ini menggunakan pendekatan studi kasus kualitatif dengan menelaah kerangka normatif Fatwa, prinsip-prinsip *fiqh mu'āmalāt*, dan implikasinya terhadap praktik industri keuangan Islam. Temuan tersebut mengungkapkan bahwa menghapus persyaratan persetujuan antar mitra dapat menimbulkan ketidakpastian tentang hak kepemilikan, konflik kepentingan, dan kerugian bagi pihak lain, sehingga membuka kemungkinan *ḍarar*. Kondisi ini dianalisis melalui maksim hukum *al-ḍararu yuzālu* dan pendekatan *Sadd al-dharā'i'*, yang keduanya menekankan pencegahan potensi bahaya sebelum terjadi. Secara teori, studi ini berargumen bahwa identitas penyewa (baik mitra maupun non-mitra) tidak menghilangkan kewajiban untuk memperoleh persetujuan, karena hak kepemilikan dalam *mal mushā'* secara inheren melekat, kolektif, dan proporsional dimiliki oleh masing-masing pihak. Oleh karena itu, studi ini merekomendasikan agar persetujuan antar mitra diwajibkan dalam Ijarah al-Māl al-Mushtarak untuk memastikan transparansi, akuntabilitas, kepastian hukum, dan keadilan dalam transaksi serta dalam industri keuangan Islam.

Keywords:
Ijarah; Harta Milik Bersama; Al-ḍararu Yuzalu; Sadd al-Dzari'ah

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Introduction

Mushārakah, the most preferred financing scheme among customers and accounting for 49.86% of total financing products in Islamic banking (OJK, 2024a), has become an essential subject of contemporary research. This includes legal acts concerning jointly owned assets among partners, which academics, practitioners, and business actors frequently discuss (Bakar et al., 2021).

The concept of *shirkah/mushārakah* gives rise to the legal consequence that the assets or property involved therein become jointly owned collective property (Lita et al., 2023). Consequently, in principle, any legal act concerning such jointly owned assets cannot be carried out unilaterally. In this regard, prior consent from the other party or partners is required before undertaking any action involving the jointly owned property. Beyond ensuring transparency, such consent also reflects moral responsibility, as the business does not belong solely to one party but is equally owned by and conducted on behalf of the other partners.

A key aspect of mushārakah contracts is that the contract's object constitutes jointly owned property of the parties, whether between individuals or between Islamic Financial Institutions (LKS) and individual customers. The issue of joint ownership has become a significant discourse in both national and global studies of Islamic economic law (Marpaung & Adly, 2022), particularly within the context of business partnerships (*shirkah*) (Hartotok et al., 2025).

Linguistically, ownership refers to control or possession. Terminologically, al-Jurjani defines ownership in Kitab al-Ta'rifat as a legal relationship between a person or group and a particular object or property, granting absolute authority to undertake legal acts over that property while preventing others from exercising legal authority over it (Gojali, 2023). Contemporary Islamic financial literature further explains that ownership in a partnership contract should be understood not only as a legal right, but also as a framework that determines the allocation of risk, liability, and decision-making authority among the co-owners. Therefore, any legal action against jointly owned assets requires a governance mechanism that protects the interests of all partners (Razak & Tazwar, 2018).

A comprehensive understanding of both the general concept and the specific provisions governing ownership becomes particularly important when parties engaging in profit-sharing partnership contracts seek to implement Sharia principles in their entirety (Hartotok et al., 2025). The contract's pillars, conditions, and execution must conform to the Sharia provisions established by DSN-MUI in Fatwa No. 08/DSN-MUI/IV/2000 concerning *Mushārakah Financing* and its derivative regulations. This is intended to ensure that the contract remains free from elements that may invalidate a *mushārakah* agreement, such as *maisir* (gambling/speculation), *gharar* (uncertainty), *ribā* (usury), *ḍarar* (harm), and *ẓulm* (injustice).

Regarding jointly owned assets in *mushārakah* contracts, Islamic jurists classify them into two categories. In both classical and contemporary Islamic jurisprudential literature, these are known as *al-māl al-mushāʿ* and *al-māl al-mushtarak*. *Al-māl al-mushāʿ* refers to property jointly owned by two or more parties in which the physical boundaries of ownership are indistinct or undivided. Meanwhile, *al-māl al-mushtarak* refers to property with clearly identifiable dimensions and value that two or more parties jointly own, whether within the context of *shirkah al-milk* or *shirkah al-ʿuqūd*.

International scholarship provides a useful comparative foundation for this distinction. Sadique (2019) explains that Islamic law treats joint proprietorship over an asset, right, or usufruct as distinct from contractual partnership based on investment and profit-sharing; this supports analyzing ownership rights in the shared asset separately from the commercial relationship among partners. Studies of jointly owned land further identify practical governance issues directly relevant to leasing: unclear allocation of shares, responsibility for rent, and distribution of proceeds (Sulong & Taha, 2021), while Ahmad et al. (2024) discuss leasing, partition, mutual agreement, and partner buyout among possible responses to disputes over jointly owned land. These studies do not examine Fatwa No. 160/DSN-MUI/VII/2024. However, they show that usufruct, consent, and benefit allocation are recurring legal and governance questions in shared-property arrangements.

In modern Islamic banking, joint-ownership issues have become increasingly complex as various forms of economic cooperation and collective investment schemes have developed (Umar et al., 2023). One notable discourse concerns the practice of sale and purchase (*bai'*) involving jointly owned property within *mushārakah* contracts. This phenomenon prompted the National Sharia Council of the Indonesian Ulama Council (DSN-MUI) to issue Fatwa No. 159/DSN-MUI/VII/2024 concerning the Sale and Purchase of *al-māl al-mushtarak* and *al-māl al-mushāʿ*, aimed at providing legal certainty and clarity regarding legal acts involving jointly owned assets in accordance with Sharia principles (Dewi et al., 2025).

Through the issuance of this Fatwa containing Sharia guidelines, every sale and purchase transaction involving jointly owned property is directed not merely toward financial or material gain, but also toward ensuring the attainment of *barakah* (blessing) for the parties engaged in the transaction. Furthermore, the Fatwa was formulated to prevent potential conflicts that frequently arise in *mushārakah* contracts, such as uncertainty in profit distribution or the allocation of loss-related risks.

Subsequent to the issuance of that Fatwa, DSN-MUI also promulgated Fatwa No. 160/DSN-MUI/2024 concerning *Ijarah al-māl al-mushtarak* and *al-māl al-mushāʿ*. Unlike the previous Fatwa, which regulates the sale and purchase of jointly owned property, this Fatwa governs lease agreements (*ijarah*) involving such property in order to ensure compliance with Sharia principles.

Referring to the paper by Hasanudin and Jaih Mubarok, the two fatwas mentioned above constitute important guidelines within *fiqh muʿāmalāt* in response to the development of contemporary transactions (Hasanudin and Mubarok, 2024). These fatwas were formulated to address the legal vacuum concerning the provisions and limitations governing partners (*sharīk*) in leasing *mushārakah* assets, thereby ensuring legal certainty in such matters.

Among the provisions contained in Fatwa No. 160/DSN-MUI/2024 concerning *Ijarah al-māl al-mushtarak* and *al-māl al-mushāʿ*, one particularly noteworthy issue is the distinction regarding the requirement to obtain consent from other partners before undertaking legal acts (specifically leasing transactions) over jointly owned property. Further study of the context underlying this distinction is important, as DSN-MUI relies on the Islamic legal maxim *Lā ḍarar wa-lā ḍirār*, which means: "There shall be neither harming nor reciprocating harm toward others."

The distinction in question lies in the identity of the partner (*shārīk*) to whom the lease is directed. Where one party leases *al-māl al-mushāʿ* to a non-partner, such a contract is permissible on the condition that consent is obtained from the other partners and that the lease does not result in *ḍarar* (OJK, 2024b). Conversely, where *al-māl al-mushāʿ* is leased to a fellow partner, the leasing party is not required to obtain consent from the other partners, provided that the *tasharruf* (legal disposition) does not give rise to *ḍarar*.

The questions that subsequently arise from these provisions concern the nature and scope of *ḍarar* that would require a partner to obtain consent from the other *shirkah* partners before undertaking *tasharruf* (leasing) over *al-māl al-mushāʿ*. Another issue concerns the legal maxim relied upon in this Fatwa, namely *Lā ḍarar wa-lā ḍirār*, together with its derivative maxims, *al-ḍararu yuzālu* (harm must be eliminated) and *Al-ḍararu yudfaʿu bi qadri al-imkān* (harm must be prevented to the greatest extent possible).

Within this framework, applying harm-prevention principles suggests a normative inconsistency in consent requirements for leasing practices involving *al-māl al-mushāʿ*. While leasing to non-partners requires prior approval from other partners to prevent potential harm, leasing to fellow partners does not impose a similar obligation. From a harm-minimization perspective and in light of the principle of Sadd al-dharāʾiʿ, partner consent may be interpreted as a necessary preventive mechanism. Consequently, a potential legal gap remains regarding consent for the use of jointly owned property. This study therefore analyzes the issue from a Sharia perspective by applying the theories of *ḍarar* and *Sadd al-dharāʾiʿ*.

Method

This study uses a qualitative research design and a normative-legal approach to explore and analyze the legal loopholes arising from the omission of inter-partner permission requirements in Fatwa No. 160/DSN-MUI/VII/2024 concerning *Ijarah al-māl al-mushtarak* and *al-māl al-mushāʿ*. The primary source is the official text of DSN-MUI Fatwa No. 160 of 2024, while the secondary sources are drawn from classical and contemporary *fiqh muʿāmalāt* (Islamic commercial jurisprudence) literature, academic drafts (the Fatwa's companion papers), and reputable scientific journals discussing the concept of joint ownership (*milk al-mushāʿ*).

The collected legal materials are analyzed using qualitative content analysis. The author deconstructs the Fatwa's normative substance and assesses how its clauses align with their underlying legal or scriptural authority (*dalīl*). By employing this method, a systematic legal interpretation is carried out to grasp the core implications of the restrictions on *tasharruf* (legal disposition) over joint property. Additionally, this technique helps pinpoint the Fatwa's internal inconsistencies in differentiating the lease permission requirements applied to co-partners versus non-partners.

To clarify and examine these legal loopholes, this study operates an analytical framework derived from the Islamic legal maxim *al-ḍararu yuzālu* (harm must be eliminated) and its subsidiary maxims, alongside the *uṣūl al-fiqh* concept of *sadd al-dharāʾiʿ* (blocking the means to harm). Through the framework of ḍarar (harm), the Fatwa's licensing regulations are tested argumentatively. Meanwhile, the *sadd al-dharāʾiʿ* approach serves as an analytical lens to assess the extent to which allowing inter-partner leasing without prior permission could become a means (*dharīʿah*) that leads to outcomes contradicting Sharia principles.

Results and Discussion

Jointly Owned Property (*al-māl al-mushāʿ*)

Mushāʿ denotes *ikhtilāṭ* (mixture) and *imtizāj* (blending). Several Islamic jurists also define *mushāʿ* through its antonymic meaning. In this regard, *mushāʿ* is linguistically associated with the meanings of *ẓuhūr* (manifestation), *intishār* (dispersion or dissemination), and *tafarruq* (separation or division). Article 139 of the *Majallat al-Aḥkām al-ʿAdliyyah* further explains that *mushāʿ* constitutes a form of ownership that extends over the entirety of a jointly owned asset. From the foregoing definitions, it may therefore be understood that *mushāʿ* refers to a characteristic attached to a particular property (Hasanuddin & Mubarok, 2024).

Comparative studies reinforce the relevance of examining actual use and benefit allocation, rather than treating co-ownership as an abstract title alone. Sulong and Taha (2021) identify disputes over rent responsibilities and proceeds as practical problems in jointly owned agricultural land, while Ahmad et al. (2024) identify leasing, partition, mutual agreement (*muwāfaqah*), and buyout (*takhāruj*) as possible legal-management responses. Al-Ghanaim (2013) separately examines whether an undivided share in jointly owned movable or immovable property may be mortgaged, mapping juristic disagreement and Jordanian civil law's position. Together, these comparative works support the present article's focus on protecting co-owners' interests in dealings with undivided property; however, they do not establish that consent is required under the particular DSN-MUI fatwa, so that normative conclusion must rest on the paper's own analysis of the fatwa and fiqh principles.

Al-māl al-mushāʿ possesses two principal characteristics. First, the authority of an owner over *al-māl al-mushāʿ* is inherently limited. No owner has absolute authority to undertake legal acts concerning the jointly owned property. Rather, that authority is limited to use, utilization, and other legal acts. These limitations encompass both *qawlī* authority (verbal or declaratory acts) and *fiʿlī* authority (physical acts or conduct), due to the legal relationship binding each owner to the

other co-owners. Furthermore, ownership rights over assets categorized as *al-māl al-mushāʿ* are also constrained by public-interest considerations (*maṣlaḥah*) and applicable statutory regulations.

Second, *al-māl al-mushāʿ* may serve as the object of a lease contract. In addition to functioning as an object of profit-sharing agreements and being transferable through sale and purchase transactions (OJK, 2024a), *al-māl al-mushāʿ* may also be utilized as the object of lease arrangements, whether between one partner and another partner (*ijārat al-mushāʿ bayna al-shurakāʾ*) or when one partner leases his or her ownership share to a third party outside the partnership (*ijārat al-mushāʿ li-ajnabī*) (OJK, 2024b).

The Islamic Legal Maxim *Lā ḍarar wa-lā ḍirār*

This legal maxim originates from a hadith of the Prophet Muhammad (peace be upon him), narrated by Imam Malik in *al-Muwaṭṭa* from ʻAmr ibn Yahya through his father (may Allah be pleased with them both) in a *mursal* transmission (Putra, 2025). According to al-Suyuthi, this maxim signifies that "one must neither inflict harm upon oneself nor inflict harm upon others." According to Ahmad Muwafi, *ḍarar* encompasses various meanings, including weakness (*al-hazl*), adverse conditions (*sūʾ al-ḥāl*), deficiency or reduction (*al-nuqṣān*), hardship or constraint (*al-ḍarāʾ*), and the diminution of another person's rights. Ibn ʻArabi defines *ḍarar* as a form of disturbance or injury (*al-adhā*).

This legal maxim embodies the principle that every individual must be protected from harmful acts, whether originating from oneself or from others, and that no person should inflict danger or loss upon another (Billah & Setiawan, 2024). Accordingly, all forms of *ḍarar* must be prevented in order to preserve the five essential objectives of *maqāṣid al-sharīʿah*, namely the protection of religion, life, intellect, lineage, and property (Putra, 2025).

In Islamic jurisprudence, this maxim has several derivative principles that elaborate on the primary maxim above. The first is *al-ḍararu yuzāl* (harm must be eliminated). This maxim means that all forms of harm, or matters that give rise to danger or injury, must be removed. This obligation is grounded in the linguistic principles of Islamic jurisprudence, particularly the use of declarative expressions (*khabar*) that convey a mandatory legal implication (Putri et al., 2025). This principle affirms that people should not be subjected to adverse conditions, suffering, or hardship, whether caused by themselves or others (Jauhari, 2018).

Second, *Al-ḍararu yudfaʻu bi qadri al-imkān* ("harm must be prevented to the greatest extent possible"). In principle, harm must be eliminated, as reflected in the maxim *al-ḍararu yuzāl*. However, when an individual faces circumstances in which complete elimination of harm is impossible, the obligation to eradicate it is lifted, and the individual must only minimize the harm to the best of their ability. This principle matters because reducing harm, even partially, is preferable to allowing it to persist without intervention (Nurliah, 2024).

Third, *al-ḍararu lā yuzālu bi al-ḍarar* ("harm must not be eliminated by means of another harm"). This maxim serves as a subsequent jurisprudential guideline, emphasizing an important limitation and exception to the principal legal maxim concerning ḍarar on which it is based (Ishak, 2020).

Fourth, *al-ḍararu al-ashaddu yuzālu bi-al-ḍarari al-akhaff* ("a greater harm is eliminated by means of a lesser harm"). In Islamic law, when an individual is confronted with two situations that both potentially give rise to harm, Sharia principles require the individual to choose and undertake the lesser harm. This consideration is grounded in the objective of preventing a greater harm that may result in more extensive damage or adverse consequences.

Fifth, *darʾ al-mafāsid muqaddam ʿalā jalb al-maṣāliḥ* ("preventing harm takes precedence over attaining benefit"). This maxim illustrates the urgency of eliminating harm in human life. Through this principle, it becomes evident that the priority accorded to preventing harm is even greater than that of achieving *maṣlaḥah* (benefit or public interest). Therefore, when an individual faces

considerations of benefit and harm simultaneously, preventing harm takes precedence over pursuing or attaining benefit (Permana, 2020).

The Concept of *Sadd al-Dharāʾiʿ*

The term *sadd al-dharāʾiʿ* consists of two words: *sadd* and *al-dharāʾiʿ*. Etymologically, *sadd* means closing or blocking something defective or damaged, whereas *al-dharīʿah* is a singular noun meaning a means or an instrument, with *al-dhara'i'* as its plural form (Al-Mishri, 1974). For this reason, some *uṣūl al-fiqh* textbooks, such as *Anwar al-Buruq fi Anwa' al-Furuq* by al-Qarafi and *Uṣūl al-Fiqh al-Islāmī* by Wahbah al-Zuhayli, adopt the plural term *al-dzaraai'* (Amin, 2020).

Ibn Taymiyyah argues that *al-dharīʿah* refers to an act that is outwardly permissible but may lead to prohibited or unlawful conduct (Intan Arafah, 2020). According to him, in its specific sense, *al-dharīʿah* constitutes a means or intermediary that leads to a forbidden act, thereby resulting in a legal consequence deemed unlawful (*haram*), even though the act itself may outwardly appear permissible (Zulfikri & Faizah, 2023).

In the study of *uṣūl al-fiqh*, there are several criteria used to determine whether a particular matter may be regarded as a means or pathway leading to something unlawful. These criteria are (Muhajirin, 2020): first, matters that inherently cause harm, such as *ihtikar* (hoarding essential commodities) and price monopolization. Second, matters that are originally permissible but are motivated by intentions that result in harm or corruption, such as loan transactions requiring an additional payment upon repayment (*ribā*). Third, matters that are permissible in principle and not intended to harm others, yet frequently lead to greater *mafsadah* (harm or corruption) than the *maṣlaḥah* (benefit) they generate, such as insulting the religious objects of worship of other faiths in front of their adherents. Fourth, matters that are permissible but may occasionally result in *mafsadah*. However, the value of their *maṣlaḥah* outweighs the potential harm, such as inspecting goods before purchase or seeing a woman one intends to propose to in marriage (*khitbah*).

Analysis of the Fatwa in Light of the Legal Maxim *Al-Ḍararu Yuzālu* and Its Derivative Principles

Application of the Maxim *Al-Ḍararu Yuzālu* to the Provisions of the Fatwa

The maxim *al-ḍararu yuzālu* signifies that every form of harm must be eliminated. This maxim is imperative in nature and operates both repressively (by removing harm that has already occurred) and preventively (by preventing harm before it arises) (Putri et al., 2025). In the context of *ijarah al-māl al-mushāʿ*, the most potential forms of harm include the deprivation of the non-leasing partner's right to benefit from property jointly owned, the emergence of disputes arising from differing perceptions regarding usufruct rights over jointly owned assets, and the loss of the economic value of another partner's share due to the utilization or leasing of indivisible jointly owned property (*mushāʿ*) to a party who is also a co-owner.

The substantive issue is that removing the consent requirement in transactions between partners may aggravate the existing harm. *Mushāʿ* property is characterized by the absence of clearly defined physical boundaries of ownership (Bubakr, 2015). Consequently, when one partner leases his or her share to another partner without the consent of the remaining partners, those excluded from the approval process are placed in a position where their usufruct rights are affected by a contract of which they have no knowledge. This condition directly contradicts the substance of the maxim *al-ḍararu yuzālu*, which affirms that any circumstance potentially causing harm to the rights of others must be eliminated (Monawer et al., 2022).

Analysis Based on the *Al-ḍararu yudfa'u bi qadri al-imkān*

The maxim *Al-ḍararu yudfa'u bi qadri al-imkān* affirms that harm must be prevented to the greatest extent possible, including before it actually materializes. This maxim embodies the principle of precaution (*iḥtiyāṭ*), which obliges every party to undertake preventive measures in transactions that may potentially cause harm to others (Hamdi & Junaedi, 2022).

Within the framework of this maxim, the obligation to obtain consent from other partners before leasing *al-māl al-mushā'* to any party (whether a non-partner or a fellow partner) constitutes the most logical and proportionate preventive measure against potential harm. The rationale is straightforward: consent functions as a mechanism of transparency. It ensures that all partners are informed of and approve any legal act concerning jointly owned property, preventing situations in which a party is unexpectedly affected by legal consequences that impact his or her rights (Al-Zarqa, 1998).

Analysis Based on the *Dar' al-Mafāsid Muqaddam 'alā Jalb al-Maṣāliḥ*

The maxim *dar'u al-mafāsid muqaddamun 'alā jalbi al-mashālih* affirms that preventing harm or corruption takes precedence over attaining benefit (Jauhari, 2018). In the context of *ijarah al-māl al-mushā'* among partners, the Fatwa may seek certain benefits, such as greater flexibility and convenience in managing jointly owned property or greater efficiency in transactions between partners (Dewi et al., 2025). However, such benefits cannot override the obligation to prevent *ḍarar*, particularly when the potential harm may be more substantial.

When a partner leases his or her *mushā'* share to another partner without consent, the excluded partner may suffer several potential harms. These include the loss of entitlement to compensation (*ujrah*) that should rightfully accrue to him or her had consent been granted and participation in the lease occurred; the emergence of an imbalance of benefits, whereby one partner acquires greater usufruct rights over property that is legally jointly owned; and the potential for internal conflict within the *shirkah*, thereby undermining the partnership relationship.

Table 1.
Analysis of the Fatwa in Light of the Legal Maxim *Al-Ḍararu Yuzālu* and Its Derivative Principles

No.	Aspect of Analysis	Description
1	Principal Legal Maxim	*Lā ḍarar wa-lā ḍirār* (there shall be neither harm nor reciprocating harm toward oneself or others).
2	Primary Derivative Maxims	*Al-ḍararu yuzālu* (harm must be eliminated) and *Al-ḍararu yudfa'u bi qadri al-imkān* (harm must be prevented to the greatest extent possible).
3	Potential Harm (*Ḍarar*)	Deprivation of other partners' rights to benefit from the property, disputes concerning usufruct rights, and loss of economic value due to the indivisible nature of *al-māl al-mushā'*
4	Recommendation Based on the Maxims	Consent should be made mandatory as a mechanism for transparency and proactive prevention before executing the contract (*bi qadri al-imkān*).

Analysis of the Fatwa in Light of the Principle of *Sadd al-dharā'i'*

In addition to the perspective of the *ḍarar* maxims, an analysis of Fatwa No. 160/DSN-MUI/VII/2024 is also essential from the standpoint of the principle of *Sadd al-dharā'i'*. Classical scholars of *uṣūl al-fiqh*, such as al-Qarafi, Ibn Qayyim al-Jawziyyah, and Ibn Taymiyyah, concur that

Sadd al-dharāʾiʿ constitutes a valid method of *ijtihād* in Islam, particularly within the domain of *muʿāmalah* (Muhajirin, 2020). This method is founded upon the premise that Islamic law does not merely assess an act in a simplistic or isolated manner, but also considers the consequences and implications that may arise from such an act, including indirect consequences that can be rationally anticipated (Taimiyah, 1995).

1. The Fatwa Provision as a *Dharīʿah* Leading to Harm

A key question in this analysis is whether leasing *al-māl al-mushāʿ* to a fellow partner without the other partners' consent constitutes a *dharīʿah* (means or intermediary) that may lead to *mafsadah* (harm or corruption). To address this question, it is necessary to identify the potential forms of *mafsadah* that may arise from such a provision.

First, the provision permitting lease transactions between partners without consent creates the possibility of monopolization of benefits derived from jointly owned property. A partner occupying a dominant position or possessing greater capital within the *shirkah* may repeatedly lease the *mushāʿ* shares of other partners without obtaining their approval, thereby effectively controlling the entirety of the benefits generated by the jointly owned asset, including benefits that proportionally belong to partners who did not participate in the lease. This contradicts the fundamental principles of shirkah, which emphasize justice and equality of rights among partners.

Second, the absence of a mandatory consent requirement may function as a *dharīʿah* leading to lease agreements that systematically disadvantage other partners. For instance, one partner may lease a *mushāʿ* share from another partner at an *ujrah* value significantly below market standards because no mechanism requires the involvement or approval of the remaining partners (Zulfikri & Faizah, 2023). Without a consent requirement, no negotiation framework can prevent such imbalance and potential unfairness.

2. Criteria of *Sadd al-Dharāʾiʿ* and Their Application to the Fatwa Provisions

As discussed previously, *Sadd al-dharāʾiʿ* comprises four principal criteria: (1) matters that inherently give rise to harm; (2) matters that are permissible in principle but contain motives leading to harm; (3) matters that are permissible yet more frequently result in *mafsadah* than *maṣlaḥah*; and (4) matters that are permissible and may occasionally cause *mafsadah*, although the value of their *maṣlaḥah* outweighs the potential harm (Muhajirin, 2020).

Applying the first criterion, the question arises as to whether the permissibility of leasing *al-māl al-mushāʿ* between partners without consent "inherently gives rise to harm." However, this is not always the case. However, structurally, the absence of a consent requirement eliminates a protective mechanism that constitutes each partner's right over jointly owned property (Intan Arafah, 2020). Consequently, although such a provision may not automatically cause harm in every instance, it creates structural conditions under which harm is more likely to occur and harder to prevent or substantiate.

Applying the third criterion, the question becomes whether such permissibility more frequently results in *mafsadah* than *maṣlaḥah*. In practical terms, the answer may depend on the good faith of the partners involved. However, the perspective of *Sadd al-dharāʾiʿ* does not rely upon assumptions of good faith among the parties. Rather, it seeks to block pathways leading to *mafsadah* based on rational considerations regarding foreseeable consequences, rather than on exceptions derived from ideal circumstances. Accordingly, the potential forms of *mafsadah* identified above, namely the monopolization of benefits, disproportionate *ujrah*, and the expansion of non-transparent practices, are sufficient to justify the application of *sadd al-dharāʾiʿ* to the relevant fatwa provision.

Table 2.
Analysis of the Fatwa in Light of the Principle of *Sadd al-dharā'i'*

No.	Aspect of Analysis	Description
1	Definition of s*add al-dharā'i'*	An effort to block every means or intermediary that is outwardly permissible but may lead to *mafsadah*.
2	Identification of *dharī'ah* in the Fatwa	The permissibility of leasing *mushā'* property between partners without consent is regarded as a pathway (*dharī'ah*) leading to various forms of harm.
3	Potential *Mafsadah*	Monopolization of benefits: A dominant partner may unilaterally control all benefits derived from the jointly owned property. Inequitable valuation: The potential determination of disproportionate or undervalued lease payments (*ujrah*) without a proper negotiation process. Transparency crisis: The weakening of accountability principles within Islamic banking practices.
4	Normative Analysis	Consent is not merely a procedural formality, but rather an expression of ownership rights inherently attached to each partner within the concept of *milk al-mushā'*.

Internal Inconsistency of the Fatwa from the Perspective of the *Ḍarar* Maxims

From the foregoing analysis, it becomes evident that an internal inconsistency exists within Fatwa No. 160/DSN-MUI/VII/2024. On the one hand, the Fatwa adopts the maxim *lā ḍarar wa-lā ḍirār* along with its derivative principles as its legal foundation (OJK, 2024b). However, the Fatwa does not apply these principles consistently across all scenarios it regulates.

The requirement of consent for leasing to non-partners reflects a proper application of the *ḍarar* maxim: legal acts involving jointly owned property that may potentially harm other parties must obtain the approval of the remaining co-owners (Hasanuddin & Mubarok, 2024). However, the exemption from the consent requirement in leases conducted between partners lacks a stronger jurisprudential basis. A prior partnership relationship does not automatically eliminate the potential for harm arising from lease agreements executed among the partners themselves. If anything, the partnership relationship makes transparency and consensus even more essential to maintain a balance between the rights and obligations of all parties involved.

Accordingly, this study argues that the maxim *al-ḍararu yuzālu* and its derivative principles, when applied consistently and comprehensively, require that consent from the other partners remain mandatory in every legal act involving *al-māl al-mushā'*, irrespective of whether the lessee is a partner or a non-partner. Removing the consent requirement in lease transactions among partners creates a legal loophole that could generate tangible and foreseeable *ḍarar*, contradicting the spirit of the Islamic legal maxims that underpin the Fatwa itself.

Sadd al-Dharā'i' and the Obligation of Partner Consent: A Normative Argument

From the perspective of *sadd al-dharā'i'*, the obligation to obtain consent from the other partners in every legal act involving *al-māl al-mushā'*, regardless of whether the lessee is a partner

or a non-partner, constitutes an appropriate measure to block the pathways leading to the various forms of *mafsadah* previously identified. The normative argument may be articulated as follows:

First, substantively, a lease agreement—whether with a partner or a non-partner—equally constitutes a contract involving the transfer of usufruct rights over jointly owned property (Hudafi & Lakuanine, 2021). The identity of the lessee (partner versus non-partner) does not alter the contract's fundamental nature as a form of *tasharruf* over jointly owned property rights. Therefore, the standard of legal protection should be the same in both scenarios.

Second, the principle of joint ownership (*milk al-mushāʿ*) in Islamic jurisprudence entails the consequence that each owner possesses proportional rights over the property, which cannot be diminished without his or her consent (Gojali, 2023). Musthafa al-Zarqa, in *al-madkhal al-fiqhī al-ʿāmm*, explains that the *mushāʿ* nature of jointly owned property limits each owner's authority, since any action taken with respect to the property may directly or indirectly affect the rights of the other co-owners (Nurjanah et al., 2025). Consequently, consent from the other partners is not merely a procedural formality, but an expression of the ownership rights inherently attached to each partner (Wardani, 2025).

Third, an analogy with the provisions applicable to *al-māl al-mushtarak* (jointly owned property with clearly defined ownership boundaries) further strengthens this argument. In the context of *al-māl al-mushtarak*, every legal act involving jointly owned property requires the co-owners' consent and clarity regarding each party's rights (Hasanuddin & Mubarok, 2024). If these risk-management standards apply to property with clearly defined ownership boundaries, they are even more appropriate and necessary for *al-māl al-mushāʿ*, where ownership boundaries are inherently indistinct (Fitriana & Yazid, 2023).

Fourth, in modern Islamic banking, where *mushārakah* and MMQ involve Islamic Financial Institutions (IFIs) as partners, removing the consent requirement creates significant potential for conflicts of interest. An IFI, by virtue of its stronger institutional position, may lease its *mushāʿ* share to a customer (who is also a partner) without authorization from the relevant institution, creating an imbalance that may prejudice the customer's interests. From the perspective of *sadd al-dharāʾiʿ*, the potential abuse arising from such a dominant position alone constitutes sufficient justification for mandating consent in every legal act involving *al-māl al-mushāʿ*, without exceptions based on the identity of the lessee.

Implications of Sadd al-dharāʾiʿ for the Refinement of the Fatwa

Based on the analysis grounded in the principle of *sadd al-dharāʾiʿ*, this study arrives at the understanding that Fatwa No. 160/DSN-MUI/VII/2024 requires refinement in two respects.

First, the provision allowing a partner to lease *al-māl al-mushāʿ* to another partner without obtaining the consent of the remaining partners should be revised. Consent from the other partners should be established as a mandatory condition (*sharṭ*) applicable to all leasing scenarios involving *al-māl al-mushāʿ*, without distinction based on the identity of the lessee. This aligns with the principle of *sadd al-dharāʾiʿ*, which seeks to close pathways leading to mafsadah proactively rather than reactively (Putra, 2024).

Second, the Fatwa should provide a clear operational definition of the *ḍarar* standard that serves as a condition of permissibility in both scenarios. Without a precise definition and an adequate verification mechanism, the requirement of "not causing *ḍarar*" lacks sufficient binding force in practice (Zaidan, 1994). From the perspective of *sadd al-dharāʾiʿ*, such ambiguity itself constitutes a *dharīʿah* (means) leading to forms of *ḍarar* that remain unidentified and unaddressed.

Thus, the analysis based on the principle of *sadd al-dharāʾiʿ* strengthens and complements the earlier analysis grounded in the maxim *al-ḍararu yuzālu*. Taken together, both frameworks provide a robust academic argument that the obligation to obtain consent from other partners in every legal act involving *al-māl al-mushāʿ*—including leasing transactions among partners

themselves—is a provision more consistent with *maqāshid al-sharīʻah* and the governing principles of *fiqh muʿāmalāt* than the provision currently stipulated in Fatwa No. 160/DSN-MUI/VII/2024.

Conclusion

The analysis of Fatwa No. 160/DSN-MUI/VII/2024 concerning *Ijarah al-Māl al-Mushtarak* and *al-Māl al-Mushāʿ* indicates the urgency of re-evaluating the provisions related to inter-partner consent in the leasing of jointly owned assets. Although the Fatwa aims to provide flexibility and efficiency in managing *shirkah* assets, it shows internal inconsistency between its legal foundations and its operational rules.

Viewed from the perspective of the maxim *al-ḍararu yuzālu* (harm must be eliminated), the Fatwa's provision exempting the consent requirement for transactions between partners is considered not fully consistent with both the preventive and corrective dimensions of Islamic legal principles. Substantively, the absence of consent may cause tangible harm to other partners, such as obstructing their usufruct rights over jointly owned property and depriving them of the economic value of their respective shares without clear approval. Therefore, the application of the maxim *al-ḍararu yudfaʻu bi qadri al-imkān* (harm must be prevented to the greatest extent possible) should necessitate a consent mechanism as a form of transparency, in order to prevent internal *shirkah* conflicts and imbalances of benefit prior to the execution of the contract.

Furthermore, based on the analysis of the principle of *Sadd al-dharāʾiʿ* (blocking the means to harm), the permissibility of leasing *al-māl al-mushāʿ* to fellow partners without consent is regarded as a *dhariʿah* that may lead to *mafsadah* or systemic harm. Such potential harm includes monopolization of benefits by dominant partners, the determination of disproportionate lease values (*ujrah*), and the weakening of accountability principles in modern Islamic banking practices. By closing this avenue through the mandatory requirement of consent in all leasing scenarios, the Fatwa would be better positioned to protect each partner's ownership rights proportionally in accordance with the principles of *maqāṣid al-sharīʻah*.

This study contributes significantly to the discourse on Islamic economic law and Sharia governance by uncovering a critical legal gap regarding joint asset management within modern fatwas. By identifying these inconsistencies, this research provides a valuable framework for regulatory bodies, such as the DSN-MUI, to refine future fatwa-making processes, thereby ensuring greater legal certainty and risk mitigation in Islamic financial contracts. However, this study acknowledges certain limitations, as it primarily focuses on a normative-textual analysis of Fatwa No. 160/2024. Consequently, future research should explore empirical perspectives, particularly regarding how Islamic financial institutions implement this fatwa in practice and its broader economic implications on market participants.

Declaration of Generative AI

This manuscript received limited assistan-ce from an AI-based language tool (Grammarly and ChatGPT) for language refinement and grammar checking. The authors critically reviewed and fi-nalized all content and accept full responsibility for the published work. No AI tools were used in data analysis or the interpretation of findings.

Declaration of Competing Interest

The authors report no known competing financial interests or personal relationships that could have influenced the work presented in this paper.

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