Maslahah Reasoning behind Fatwa of *the Indonesian Ulema Council*: Between Ijtihad's Method and Pragmatism

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ABSTRACT This article examines the legal reasoning behind the fatwas consistently issued by the Indonesian Ulema Council, especially in the socio-cultural and Islamic financial industry products. Through *legal discourse analysis* as an approach, this article has succeeded in identifying that *maslahah reasoning is* predominantly practiced by the Indonesian Ulema Council in issuing fatwas in various fields, especially in the socio-cultural sector and Islamic financial products. This is intended to accommodate the needs of the public and the Islamic finance industry. Based on the basic assumptions, this reasoning can sustain the development of an Islamic economy as well as be able to present fatwa products that are responsive to public needs.

KEYWORDS *Maslahah Reasoning, Pragmatism Islamic Law, Maqasid al-Shariah, Ijtihad's Method and the Objective of Islamic Law.*

INTRODUCTION

The fatwa issued by the Indonesian Ulama Council locates *maslahah* as a dominant reason being an argument or *istidlal* in the fatwa formulation (Suhartono, 2018). In various aspects, of course, without exception to fatwas in the social and cultural fields but also in product of islamic finance (e.g. islamic bank and insurance products). This kind of reasoning is understandable, because *maslahah* is a fundamental paradigm and being a philosophical foundation that is believed to be able to protect both legal subjects and objects, at the same time (Sholihin, 2020). In essence, the fatwa formulated and offered to the public is aimed at legality of a phenomenon i.e., either in the sense of an entitlement or a prohibition. In a broader interpretation, *fatwas are* believed to be an authoritative source in the social, economic, political and cultural structures of Muslims (Fauzi, 2017). In this regard, fatwas issued by the Indonesian Ulema Council can be interpreted as a response to phenomena, problems and crises faced by Muslims in various fields of life (Hasanuddin, 2019). It is just that the question is why-based legal reasoning is *maslahah* so dominantly used as a *istidlal* legal. This is not accidental, but there is a fundamental reason behind the method consistently used by *mujtahid of* the Indonesian Ulema Council.

The method to use the framework *maslahah* correlates with the recent popularity of the paradigm *maqasid al-shariah* in the Islamic legal discourse. This can also be understood as an attempt to get out of the trap of defensiveness-apologetics — an attitude of being too cautious, even blind imitation, and blocking the path of critical ijtihad. This attitude certainly does not benefit Muslims. Because the times demand legal flexibility (Auda, 2008). If this is not the case, Muslims will be trapped in an awkward condition. In this situation, *maslahah* reasoning becomes important method, and being the foundation of Islamic legal reform. For example, Jasser Auda, who put *maqasid al-shariah* as the main paradigm in responding to changing times (Auda, 2008). This kind of view can be classified as a 'creative-critical' view in *institutions* the Islamic legal. This notion emphasizes philosophical reasoning towards *maqasid al-shariah,* or *the objective of Islamic law* (Rofii, 2014)*.* This certainly has implications for the style of Islamic law published by the Ulama Council, in general, especially in Indonesia. The legal style in question will be accommodative as long as the fatwa is in line with the spirit of *maslahah* that might be achieved when the fatwa is issued and introduced. In this regard, then, the Indonesian Ulama Council's application (e.g. *maslahah* reasoning*)* of reasoning deserves to be critically understood.

Critical understanding of the fatwas issued by the Indonesian Ulema Council, in this article, starts with a fundamental question, namely: "why is-based reasoning *maslahah* dominant and easily identifiable from the various fatwas formulated by the Indonesian Ulema Council?" The questions were then broken down into several discussions, namely: 1) What are the forms of based-arguments *maslahah* used by the Indonesian Ulema Council in formulating fatwas; 2)

What is the purpose of using-oriented arguments *maslahah* in the fatwa of the Indonesian Ulema Council, both in the field of Socio-Culture and Islamic Financial Products. These two discussions will be the main topics to reveal the relevance of-based reasoning *maslahah* in the fatwa of the Indonesian Ulema Council. This also confirms the *gap* that this article can fill. At a time when many Islamic law scholars understand-based reasoning *maslahah* in the fatwa of the Indonesian Ulema Council, it is part of the *fiqhiyyah makharij* that must be taken (Amin, 2017a). This article instead attempts to highlight the structure of reasoning and the paradigm behind the *legal reasoning* i.e., oriented *maslahah* in the fatwa issued by the Indonesian Ulema Council.

Literature Review

Maslahah as an Objective of Islamic Law

Ramadhan Al-Buthi explained that *maslahah* is any benefit that can be categorized into *maqasid al-syariah* (Al-Buthi, 2010). This simple meaning emphasizes that *maslahah* is certainly inherent and inseparable from the goal of lawmakers (e.g. Allah *Ta'ala*) when stipulating Islamic law, and is explicitly contained in the primary Islamic texts—Quran and Hadith. Abdurrahman bin Abdul Aziz Al-Jufni interpreted *maslahah* in detail. According to him, etymologically, *maslahah* was constructed from the form of *masdar*, namely *al-shalah* which is the opposite of the word *al-fasd* (Al-Jufni, n.d.). Then, Al-Jufni refers conceptually to the definition put forward by Ibn Qudamah of *maslahah* as: "*Jalb al-Manfaah wa Daf'u al-Mudharah",* or realization of benefits or anticipating damage (Al-Jufni, n.d.). From this concept, the nature of the *maslahah* can be formulated as something that is consensus and collectively accepted, and rationally as *maqasid al-syariah* or *the objective of Islamic law.* In fact, the islamic law is imposed on humans and intended for two things, namely: for the benefit of mankind and to prevent damage on earth (Al-Jufni, n.d.). In addition, the *fuqaha'* often elaborated on the meaning of *maslahah* by looking at the plural form of *maslahah*, namely *masalih* taken from the form of the verb *aslaha,* with the meaning of *ata bi al-salah* or bringing benefit (Al-Jufni, n.d.). Briefly, *maslahah* as a concept is a value framework clearly *embodied* in the source of Islamic law.

The framework becomes a reference in various products of Islamic law, which in the process of *istidlal* is to find legal arguments. This process was applied when the *mujtahid* do not find out the argument that *qath'i-ijmaiyahh,* or certain and agreed upon. Reaffirming this view, Imam Al-Ghazali long ago formulated that *maslahah* refers to a oriented-process towards benefit, and attempts to anticipate damage (*fasd*). There is a set of criticism. For example, Abdurrahman bin Abul Aziz Al-Tsudais explained that *maslahah* is limited in the concept of Al-Ghazali, which only builds the meaning of problems, simply realizes benefits, and avoids *mafsadat.* This only reaches *maslahah* in the human sphere. Much broader than this concept, *maslahah* is *muhafidzah* towards the goal of the shari'ah maker— Allah *Ta'ala.* This confirms the theorem of *maslahah* offered by Imam As-Syatibi, that the objectives of the Shari'a will always be tied to the objectives of Allah *Ta'ala* when establishing His Shari'a on his creatures, namely: choosing their religion; religion; sense; offspring; and their treasures (Yusuf, 2013). With great simplicity, Abdurahman bin Abdul Aziz Al-Tsudais emphasized during various decisions; system; rules; even *fatwas* due to protect these five things, then it can be categorized as *maslahah.* Conversely, when they conflict or actually result in the disappearance and threat of these five things, it can be considered as *mafsadat* (Al-Tsudais, n.d.). Therefore, it needs to be rejected.

Wael B. Hallaq calls *maslahah* as "*a universal aims of the law*" (Hallaq, 2011). Because it is interpreted as the universal goal of Islamic law, achieving that universal goal requires a good understanding of the paradigm of *ta'lil*-a theory aimed at identifying and verifying *the ratio legis* based on particular rules. This ratio can be an “omni presents” entity, and is highly dependent on the hermeneutic-semantic relationship between "new things" and "*the language of revelation*" frequently identified in Quran, hadith and sunnah (Hallaq, 2011). Through the paradigm, *ta'liliyah is* possible for the *mujtahids to* express the *rationality* behind the sharia text. Briefly, the *rationality* perceived by Wael B. Hallaq is a *problem* in itself (Hallaq, 2011). Why is it called rationality, because the purpose of sharia is to ensure that human life lasts according to the values of the sharia. A a result, Muslims not only prosper in the world but also survive in the hereafter.

In addition, Muhammad Firdaus Ab. Rahman (2019) also emphasizes that Islamic law was introduced by Allah *Ta'ala* to Muslims, with the purpose that the law can protect *maslahah*, and most fundamentally is to promote human welfare or what is termed as *tahqiq masalih al-'ibad,* or maintaining nobility. *sharia* and protect it from things that are destructive (Ab Rahman et al., 2019). Muhammad Firdaus Ab's view undoubtedly emphasized that *maslahah* is *the objective of Islamic law,* or *maqasid al-shariah.* In this context, the effort to perform *istinbath* legalis not only sufficient to make *fiqh* a legal product. However, any method of legal stipulation i.e., *ushl fiqh*, ideally should also be able to identify the "goal of sharia" or *maqasid al-shariah.* In order to reason whether the *fatwa of* the Indonesian Ulama Council was issued to achieve and protect the *objectives of sharia,* it seems necessary to elaborate on the concept of the *fatwa* as the described-opinion in the classical tradition.

Fatwa: Concept and its Methods

The nature of fatwa in the classical meaning put forward by Imam Ahmad bin Hamdan Al-Harani Al Hanbali, is something that is *fard ain* or individual obligation. This applies when the scholars who are complete, the requirements for fatwa are very limited. But when there were many *muftis* in one area, or region, the law to become a *mufti* changes to *fard kifayah,* or collective obligation (Al-Hanbali, n.d.). Why

are *fatws* understood under a different legal status? The argument is in the level of dependence of the community and the public's need for the fatwa. In this case, Ma'ruf Amin interpreted *fatw* as a religious answer to all problems faced by Muslims according to the context (Amin, 2017b). In addition, *fatw is* also interpreted as an effort that has been made since the period of the Prophet's companions in deciding and providing legal opinions on issues of the *ummah* that have surfaced. For example, Ibn Mas'ud followed Uthman in making *ijtihad* or in fact leaving ijtihad. Meanwhile, Abu Bakr's *ijtihad* was followed by Umar bin Khattab. This means that the *fatw* actually refers to the efforts consistently resulted from the authoritative sources of Islam—*mujtahid* and *ulema* who meet the requirements of taking a law (Asni, 2019). From the meaning put forward by these scholars, fatwas contain two concepts, namely: *First*, a *fatwa is* formulated when there is an urgent situation that requires a legal opinion from the ulama through process of *ijtihad* in a strict; and *Second*, fatwas issued by Islamic authorities: in this case referring to individual ulama, or to institutions such as the Indonesian Ulama Council. The requirement for 'authority' means that the *ulema* involved in making or formulating a *fatwa* are deemed to have fulfilled the requirements for taking a law. In fact, not only that, the scholars are also tied by a set of ethics (Tahir, 2009). In this regard, the *fatwa* does not opposite to *maqasid al-shariah.* This means that the *fatw* itself must be built on the principle of "caution" and hard and sincere efforts.

There is a strong relationship between *ijtihad* and fatwas. This is reflected in the use of the word الفتوى or الفتيا which is derived from the *masdar* الفتى which means strong youth (Mayyadah, 2013). The use of this word for the term *fatwa* indicates that the person issuing the fatwa is a knowledgeable figure, and has sufficient authority to provide legal opinions regarding various problems faced by the ummah. In this context, Yusuf Al-Qardhawi explains the meaning of fatwa as:

> "*The explanation oflaw syar'i on a problem from several problems or answers to the question of the questioner, whether it is clear or vague, individual or mass* (Mayyadah, 2013)*."*

Yusuf Al-Qardhawi did not confirm the conditions for a *fatw to be* issued. But implicitly explained that a *fatw is* formulated when there is a request by an individual or society. In more detail, Usãmah al-Asyqar explained that the *fatwa* is:

> "*Announcement of Allah's law or Islamic law is based on aargument syar'i against anyone who asks about the law in various realities and other than that, without obliging* (Mayyadah, 2013)*."*

The interesting definition was put forward by Usmah al-Asyqar: the *fatw is* only for legal opinion, and only has a consultative character. Therefore, it is not up to the level of implementation to '*fard*' or an obligation that must be fulfilled. This means that the *fatw* formulated by the *ulema* as an answer to the problem posed is not binding in nature: it can be followed or on the contrary. Nevertheless, the *ulema* who are asked for a *fatw* must locate their opinion on strict conditions. This requirement is attached to the *mufti*, or ulama who have been allowed to carry out attitudes. Shortly, not all scholars can be categorized as *mufti*, unless they meet the requirements which include, that the *mufti* must be a just Muslim, a *mukalaf, a jurist (faqih*), a *mujtahid* and has a healthy memory, mind and mastery of *fiqh* and knowledge needed to produce theory of *fiqh* (Al-Hanbali, n.d.). The conditions put forward by Imam Ahmad bin Hamdan al-Harani Al-Hanbali emphasized that a *mufti* is a scholar who not only has extensive religious knowledge, but also has high ethics and morals. This can be understood, since the *fatwa* issued will be oriented towards *maqasid al-shariah.* In addition, this concept emphasizes that the fatwa is based on a strong methodology. However, every *fatwa* formulated by the scholars implies a method or *manhaj: specific istinbath of* islamic legal, and differ in the aspects of the institution, time, and *setting* in which the *fatw* was produced.

Abozaid and Abdulazeem (2016) critically identifis the *tools* ijtihad that are commonly used in relation to the formulation *fatwas* of Islamic financial. This identification, for example, refers to the meaning of the *sharia* text (*Quran text*) and the model of interpretation of it. In this case, the sharia text refers to the Quran and Sunnah. It is believed, and it is agreed that the sharia text provides rules even though some are still *mujmal* (Abozaid & Abdulazeem, 2016). In fact, in this unsettled condition, a set of methods is needed to successfully produce the law from the sharia text. In the case of the sharia text, which *qath'i* explains the law in the field of muamalah, generally the *fuqaha'* deduces the text to be reaffirmed in the *ashl*-law. On the other hand, when there was absence of a set of argument that clearly explains the law of a problem, the *ulema* or *mujtahid* will interpret it carefully, even it need any longer. However, in general, scholars take a position in the *absence*of authoritative texts (*qath'i*) by being *permisible justifying* or transactions, which are not regulated authoritatively by the *sharia* text (Abozaid & Abdulazeem, 2016). In addition, in the Indonesian context, KH Ma'ruf Amin explained that the Indonesian Ulama's ijtihad method of *fatw* has a distinctive and specific way. *First*, "Al-Taysir Al-Manhaji", which means applying a light opinion but still according to the rules. Although taking a lighter opinion (*at-taisir*), it is still within the existing caridor of *manhaj* . In this case the DSN-MUI fatwa will provide a solution by introducing the best solution as long as it does not conflict with *sharia*. However, the use of this method should not be done excessively (*al-mubalagah fi al-taysir*). This is not justified because it can lead to debilitating attitudes, or *al-tasahul* (Amin, 2017a). The fundamental principle of applying the rules of *al-Taysir al-Manhaji* in the DSN-MUI fatwa is "to use a more *diligent* and more *beneficial opinion* whenever possible; if not, the more opinion is used *problematic* thing. This is in accordance with the principles of fiqh,

aqzu bi arjah al aqwal wa al aslah in amkana wa ila fa aslahah, or taking a stronger opinion and *maslahah* if possible, and if it is not enough, consider the more *maslahah* (Amin, 2017a).

Second, "at-tafriq baina al-halal wal haram", or efforts to separate the *halal* and *non-halal* assets (Amin, 2017a). In general, it is already understood by the public that the mixing of the halal and the haram is won by the haram according to the rules. If there is a mixture of what is lawful and what is haram, then that mixture is punished as *haram,* or prohibition. The rule, *idza ijtima 'al-halal wa al-haram ghuliba al-haram,* for the National Sharia Council (DSN) of the Indonesian Ulema Council, is unrelevant to be applied in the economic field. This is because these principles are more suitable for use in the food sector, especially in liquid food. Meanwhile, if the separation between what is halal from what is haram can be done, for example in the case of mixing between halal and non-halal, then the rule of *assets, tafriq baina al halal 'ani al haram, is* more relevant to use (Amin, 2017a). *Third*, the rules of *i'adah al-Nazhar,* or critical review. This means that an effort to re-examine the opinions of previous scholars can be done in the event that the opinions of previous scholars are considered unsuitable for guidance due to difficult factors to implement (*ta'asur, ta'adzdzur aw shu'ubah al-amal*). This is done by re-examiningopinion *Mu'tamad's* by considering legal opinions that have been considered weak (*marjuh* even *mahjur*), because there is *'illah* a new law motive or that opinion is more beneficial; then the opinion is used as a 'guideline' or *mu'tamad* in establishing law. *Fourth*, "tahqiq al-manath" or analysis of determining legal reasons or *'illat* is an analysis to find out the existence of a legal reason or '*illah* other in one case, other than *illat* which is known beforehand, either through *text, ijma,* or *istinbath* (Amin, 2017a). The rules offered by KH. Ma'ruf Amin, and later became a distinctive tradition in the Indonesian Ulama Council, is certainly inseparable from the basis of the classical legal ijtihad methodology.

Wael B. Hallaq (2011), for example, underlines that *maqasid al-shariah is* not merely a "fundamental objective of Islamic law", or *the objective of Islamic law.* But is the foundation of analytic in determining; and categorize '*illath,* whether it can be categorized as *maslahah* or precisely *mafasadat* (Hallaq, 2011). Thus, *maqasid al-shariah* is the paradigmatic domain of '*ta'lil'* or theory which aims to identify and verify "*the ratio legis*" behind particular law. As for *the ratio* tangible in various forms, depending on the hermeneutic-semantic relationship between the new case and the revealed text: it could be the text of the Quran or the sunnah (Hallaq, 2011). That is, *maqasid al-shariah* has transformed from a meaning limited to the 'goal of sharia', into a *framework* in identifying the ratio, the '*ilath* behind particular Islamic laws.

METHOD

This article applied the approach offered by Rana H. Alsoufi (2013), namely *legal discourse analysis.* This approach is useful in investigating the *fiqh* tradition, especially in relation to the *fatwas* produced by the Indonesian Ulama Council. In this case, fatwas were selected in the social and cultural fields. Then it is compared with the DSN-MUI fatwa regarding Sharia Banking Products. The main objective of the *legal discourse analysis* is to explore *maslahah reasons* which serve as legal arguments behind the fatwa introduced by the Indonesian Ulama Council. In addition, *legal discourse analysis* offers comprehensive and detailed reading and is able to explain how *maslahah is* used as the basis of argumentation in the *fatw* of the Indonesian Ulema Council (Alsoufi, 2013). By identifying the structure of legal argumentation, or *istidlal* that was noted by the Indonesian Ulema Council in the fatwa-social sector and Islamic banking products, it is projected to find *the ratio legis* used dominantly by mujtahids in the Indonesian Ulema Council. The mapping process through the method of *legal discourse analysis* leads to a critical assessment by classifying the position of the Indonesian Ulama Council in terms of social culture and Islamic banking products, whether on the spectrum of classical ijtihad or modern ijtihad.

The Unit and Approach of Analysis

The article selects two fatwa domains issued by the Indonesian Ulama Council, namely: fatwas in the socio-cultural field and DSN-MUI fatwas related to sharia financial products. There are several MUI DSN fatwas related to Islamic financial products; and various *fatwas* in the socio-cultural field which are used as units of analysis, in this article. This selected *fatws* were based on the argument that the fatwas issued by the Indonesian Ulema Council are very broad and with 116 fatwas in 2017 (Zein, 2018). This number continues to increase, in line with increasing socio-cultural issues and market demand for Islamic financial products. Therefore, the number of fatwas selected for review is fatwas that expressly use *the ratios of legis* which refers to *maslahah*, which will serve as the unit of analysis. This requires a specific approach to identification; and reading critically the reasoning of *maslahah* that is in the *fatw* of the Indonesian Ulema Council on the socio-cultural and Islamic finance.

The analytical approach applied in this article borrows a model introduced by Sami Al-Daghistani (2017), namely *critical inductive analysis* (Al-Daghistani, 2017). This analysis was introduced in one of his dissertations, *the making of Islami economics: an epistemological inquiry into Islam's moral economic teachings, legal discourse, and Islamization process.* This analysis serves to identify and classify the *maslahah reasoning* used by the Indonesian Ulema Council, in *fatwas* in the socio-cultural sector and sharia financial products. Apart from that, it also serves to provide a critical view of why *maslahah* as reason is used in the fatwas of the Indonesian Ulema Council. With this analytical approach, it is projected

to understand and classify the *maslahah* reasoning that appears dominantly in varied form; and context.

RESULT AND DISCUSSION

Maslahah Reasoning on MUI's Fatw: An Early Identification

The *maslahah* in some literature is referring to *maqasid al-shariah.* In this regard, the *maslahah* is the fundamental purpose behind Islamic law in particular, either in *qath'i* found in Islamic texts or as a product of *ijtihad* of islamic *jurists or fuqaha* (Duderija, 2014). The assumption that can be made in this article is that any *ijtihad* performed by scholars, both individually and institutionally, is intended to find *maslahah*, or to make *maslahah* the most basic and fundamental foundation of legal argumentation. This assumption can be identified from the fatwas periodically introduced by the Indonesian Ulema Council, in the field of Social and Cultural and the DSN-MUI fatwa related to Islamic Finance products in Indonesia.

Figure. 1

The Extraction of *Maslahah* on Fatwa in the field of Socio-Cultural

Fatwa Number/Issues	*The Dalil Types*	*The Dalil based-Maslahah*
Perayaan Natal Bersama	*Hadis*	*".Barang siapa memelihara diri dari yang syubhat itu, maka bersihlah agamanya dan kehormatannya, tetapi barang siapa jatuh pada yang syubhat maka berarti ia telah jatuh kepada yang haram, semacam orang yang menggembalakan binatang makan di daerah larangan itu..." (Dari Nu'man bin Basyir).*
	Ushl Fiqh Maxim	*"Menolak kerusakan-kerusakan itu didahulukan daripada menarik kemaslahatan-kemaslahatan."*
Perkawinan Beda Agama	*Fiqh Legal Maxim*	*Mencegah kemafsadatan lebih didahulukan (diutamakan) dari pada menarik kemaslahatan.*
Perdukunan (kahanah) dan Peramalan ('Irafah)	*Fiqh Legal Maxim*	*Mencegah kemafsadatan lebih didahulukan (diutamakan) dari pada menarik kemaslahatan.*
Pornografi dan Pornoaksi	*Fiqh Legal Maxim*	*Mencegah kemafsadatan lebih didahulukan (diutamakan) dari pada menarik kemaslahatan.*
		Bahaya harus dihilangkan
Perkawinan Beda Agama	*Fiqh Legal Maxim*	*Mencegah kemafsadatan lebih didahulukan (diutamakan) dari pada menarik kemaslahatan.*

There are many fatwas published by the Indonesian Ulema Council in the field of social. However, from the type of propositions used as the foundation of law enforcement, the Indonesian Ulema Council has its own, and distinctive tradition. Referring to the text or *nash* — both the Quran and the Hadith, is still dominant as a fatwa argument. Then followed by *Qa'idah Fiqh (fiqh legal maxim).* Interestingly, the process of taking evidence or *istidlal* in the fatwa of the Indonesian Ulema Council in the field of Socio-Cultural, is in the *framework of* realization of public interest, or *maslahah* (Asni, 2019). The gradual use of propositions can even be called simultaneous. In a sense, the Indonesian Ulema Council refers to the *nash* text, as well as *Qa'idah Fiqh* simultaneously. In fact, it does not immediately directly refer to and express propositions that are content based on *maslahah* values. But also presented propositions that can explain the topic or question of emerging *fiqh*.

The Indonesian Ulama Council in issuing a fatwa certainly involves special reasoning. This can be understood, because the fatwa can *literally* be interpreted as official advice from an authority on Islamic law or dogma (Tahir, 2009). This asserts that the fatwa will be highly determined how an authority, such as the Indonesian Ulema Council, builds on the tradition of Islamic law. This is then termed "standardization of fatwas". The method of *istinbath* systematically constructed, and implemented. With the aim, the fatwa is able to solve the problem as a "*pre-text*" that precedes the fatwa published by the Indonesian Ulema Council (Asni, 2019). This asserts, that the choice of evidence in the fatwa of the Indonesian Ulema Council is correlated with the

axiological construction of a fatwa formulated by the Indonesian Ulema Council. It can be understood that the choice of each proposition used, is generally very determined by the method of *inference* adopted dominantly by the authority that issues the fatwa: in this case the Indonesian Ulema Council indicated that attempt. Historically and theoretically, the method of *istinbath* on law in Islam is plural, and diverse. This is an implication of the various schools of jurisprudence known in Islam — the school of Syafi'iyah; Hanafiyah; Maliki; and Hanabilah. Nevertheless, the Indonesian Ulema Council in issuing fatwas is therefore not stuck or *taqlid* on one *manhaj istinbath* based on certain *mashab* only. Instead, the Indonesian Ulema Council bridges certainly to various *manhaj* through a project termed "unification as a paradigm."

The paradigm of unification refers to the method of *ijtihad* developed by the Indonesian Ulema Council due to formulate a fatwa to solve problems in the social and cultural issues. The application of this unification paradigm can be identified from the reasoning developed by the Indonesian Ulema Council in issuing fatwas through the strengthening of one *proposition* to achieve *maslahah* and *maqasid* (Asni, 2019). In this context, *maslahah* is not limited to being positioned as an "objective of Islamic law". But it has become a paradigm of producing Islamic legal theory. This is understandable, due to the 'emptiness' of the text that clearly explains the new legal issues. Ahmad Atif Ahmad (2013) interprets this as part of the effort to find the law, or referred to as *ijtihad,* and later interpreted as "the generator of norms (Ahmad, 2012).” Interestingly, the oriented-*maslahah* reasoning*:* this can not only be identified in fatwas in the socio-cultural field. But it can also be clearly found in the fatwa DSN MUI related to sharia banking products.

Figure. 2

The Extraction of *Maslahah* on DSN MUI related to Bank Syariah Products

Fatwa Number/Issues	*The Dalil Type*	*The Dalil based-Maslahah*
No. 92/DSN-MUI/IV/2014 *Tentang* Repo Surat Berharga Syariah (SBS) Berdasarkan Prinsip Syariah	*Fiqh Legal Maxim*	*“Dimana terdapat kemaslahatan, di sana terdapat hukum Allah.”*
No. 95/DSN-MUI/VII/2014 Tentang Surat Berharga Syariah Negara (SBSN) Wakalah	*Fiqh Legal Maxim*	*“Menghindar mafsadat (kerusakan/bahaya) harus didahulukan atas mendatangkan kemaslahatan.”*
No. 96/DSN-MUI/IV/2015 Tentang Transaksi Lindung Nilai Syariah (*Al-Tahawwuth Al-Islami/Islamic Hedging) atas Nilai Tukar*	*Fiqh Legal Maxim*	▪ *Segala mudharat (bahaya) harus dihilangkan;* ▪ *Bahaya (dharar) dicegah sebisa mungkin.*
No. 97/DSN-MUI/XII/2015 Tentang Sertifikat Deposito Syariah	*Hadist*	*“Tidak boleh membahayakan / merugikan orang lain dan tidak: boleh (pula) membalas bahaya (kerugian yang ditimbulkan oleh orang lain) dengan bahaya (perbuatan yang merugikannya)." [HR. Dar Al-Quthni]*
	Fiqh Legal Maxim	▪ *"Segala madharat (bahaya) harus dihindarkan sedapat mungkin. "* ▪ *Tindakan Imam [pemegang otoritas] terhadap rakyat harus mengikuti mashlahat.* ▪ *Mencegah mafsadah (kerusakan) harus didahulukan daripada mengambil kemaslahatan."*
No.99/DSN-MUI/XII/2015 Tentang Anuitas Syariah untuk Program Pensiun	*Fiqh Legal Maxim*	▪ *"Segala madharat (bahaya) harus dihindarkan sedapat mungkin. "* ▪ *Tindakan Imam [pemegang otoritas] terhadap rakyat harus mengikuti mashlahat.* ▪ *Mencegah mafsadah (kerusakan) harus didahulukan daripada mengambil kemaslahatan."*

When searching more broadly, it will find *reasoning problems* in DSN-MUI fatwa products related to sharia bank products. Only the characteristics of the propositions used are relatively homogeneous. There are at least two types arguments, which tend to be used on a fatwa DSN-MUI related products of Islamic banking. *First,* the argument derived from the texts, namely: the Quran and Sunnah. *Secondly,*the arguments of philosophy, also from the context of a text. Only the text in the form of the texts of the Quran and Hadith, also selected based on the values of *maslahah* contained in the text, however, *maslahah is* certainly not the only evidence that is the basis of the legal argumentation choice developed by the Indonesian Ulema Council in compiling and issuing a fatwa.

At least *maslahah* becomes' the main 'goal to be achieved in formulating a fatwa by DSN MUI. In this case, Ma'ruf Amin explained that sharia banking products are believed to be able to encourage *maslahah* to the community, or Muslims (Amin, 2017b). It is not surprising that the reasoning of law based on *maslahah* is dominantly found out in the various fatwas of the Indonesian Ulema Council, both in various fields and specifically in sharia financial products. The choice of reasoning based on *maslahah* is positioned as the philosophical foundation, that Islamic law contains a "goal" oriented on *maslahah* as *the objective of Islamic law* (Zatadini & Syamsuri, 2018). Although later as a scholar assessed there was a transformation of fatwa formulated by the Indonesian Ulema Council. This transformation, referring to Wahid, can be judged from the existence of three patterns, namely: (i) *copy paste model; (ii) absorb the substance of the fatwa which is then translated into law; (iii) expand the fatwa into more operational rules* (Wahid, 2016). Although the transformation took place and became a methodological structure in the formulation of fatwas of the Indonesian Ulema Council. Yet various propositions that contain the spirit of '*maslahah' are* still dominant and can be found in the fatwa.

Regarding the use of the oriented-*maslahah* propositions by the Indonesian Ulema Council, in the formulation of fatwas, generally refers to the following: *First*, consider the text that clearly contains the word *maslahah* or reject *harm. Second*, consider the context and find the *ilath* or 'prima causa' behind an Islamic text — Quran and hadith, which refers to the spirit of *maslahah.* These two efforts become the method of how the Indonesian Ulema Council in formulating fatwas. This is intended due to that the 'purpose' behind the fatwa can be achieved. In this case, Ma'ruf Amin explained that the fatwa formulated in orded to reliaze the values of welfare. Therefore, the fatwa issued is a legal foundation for sharia economic activities, as well as a framework to eliminate the practice of *gharar* in every economic activities carried out by the people and the sharia financial industry (Amin, 2017b). In this context, Ma'ruf Amin clearly states that economic activity must be based on sharia principles that can result the benefits to society such as improving welfare and other benefits. In addition, the Islamic financial system must prevent all *corruption*. In *ushl fiqh* is known as the rule, *Jalb al-Masalih wa dar'u al-mafasid,* or applying benefits and preventing *muufsadatan* (Amin, 2017b). DSN MUI role in the development of Islamic financial products related fatwa, is the first step to control and ensure that transactions in the banking industry in line with the values Maqasid as-shariah (Qoyum, 2018), and capable of creating *maslahah* for the customer and the bank. The next question that must be clarified is: "Did the use of propositions oriented to the reasoning of *maslahah* intended as a methodological basis, or is it something pragmatic to accommodate the interests of the sharia financial industry per se?" To answer and explain the question it is necessary to analyze the function of the proposition *maslahah* and understand it in the context of 'eclectic-pragmatic' offered by Ahmed Fekry Ibrahim (2015) through his work, "Pragmatism in Islamic Law: A Social and Intellectual History."

Maslahah Reasoning as Islamic Law Solutions (Makharij al-Fiqhiyah)

The *maslahah* is the main purpose of every sharia prescribed by Allah *ta'ala*. It is not excessive when *maslahah* was interpreted as the *ultimate goal* of maqasid al-shariah. In this regard, there are two main classifications from the aspect of *maqasid al-shariah*, namely: *First*, Al-Ghazali believes that *maqasid al-shariah* is the "*ultimate purpose*" that must be achieved for the benefit of human beings on earth. *Second*, Ibn Ashur considers that there are at least two general and essential aspects of the *maqasid al-shariah,* namely promoting well-being (*jalb al-masalih*) and rejecting harm (*dar'u al-mafasid*) (Bedoui & Mansour, 2015). This means, *maslahah* is the main vision behind Islamic law set by the Owner of the Shari'ah, namely Allah *ta'ala*. It can be accepted when various ijtihad performed by the scholars, and mujtahids, is to find out the value of benefits behind the *ijtihad* as products offered to the public.

To multiply and realize *maslahah* in a fatwa issued by the Indonesian Ulema Council, both in the field of socio-cultural and sharia finance, MUI have its specific methodologies. Ma'ruf Amin, chairman of the Indonesian Ulema Council, introduced at least 4 (four) fiqh solutions that can be applied in issuing fatwas. *First*, "al-taysir al-manhaji", which means: "choose a light opinion but still follow the rules. In practice, although taking a easy opinion (*at-taisir*) but should remain within the framework of *manhaj* existing. This means that the MUI fatwa will provide a way out by considering the best solution as long as it does not conflict with sharia. Only this method should not be done excessively (*al-mubalaqhah fi al-taisir).* It is not allowed because it causes contempt (*al-tasahul*). The method of *al-taysir al-manhaji is* intended to avoid fatwas being confirmed without following the guidelines. It is not uncommon for a problem to be answered with a fatwa that alleviates but only considers the aspect of its benefits and does not take into account the methodological suitability as aspect (*al-manhaj*). This should not be done, because it will

lead to caught up the habit of looking for something light only (*tatabbu 'al-rukhash*), which is therefore forbidden in Islamic law (Amin, 2017a). This method is based on the principle of the rule: "use a more *diligent opinion* and more *maslahah* if possible. If not, then what is used is a more opinion *maslahah*. Operationally, this method is done by efforing to find out a solution of *fiqh* by referring to a stronger proposition, but contains an element of doubt. But when it was not realistic, the consideration of welfare only comes first (Amin, 2017a). Then, a stronger (*aqwa* proposition) is made into consideration afterwards. This principle, allows the opinion or legal opinion of the previous scholars who are weak (*qaulun marjuhun*), can be reconsidered due to different conditions and situations and in accordance with the context of the opinion.

Second, is the rule that refers to the mechanism "*at-tafriq baina al-halal wal haram*," or separating halal and non halal property. Briefly, scholars understand the mixture between the *halal* and the *haram*, then the *haram* is eleminated. This is according to the rule: "when mixed between the halal and the haram, then the mixture is punished haram (*idza ijtima 'al-halal wa al-haram ghuliba al- haram*). " Ma'ruf Amin reinterprets this tradition. For him, the rule is inappropriate to be applied in the economic field. Because this rule is the context used in the field of food, especially liquid food. Halal-haram in the field of food is related to the ingredients *('ain*), so when there is a mixture then there will be annoyance and fertilization that is difficult to separate (Amin, 2017a). In such conditions it is appropriate to use the rules that are commonly used by Islamic scholars. On the other hand, the mixture refers to a mixture of property, not food, thus the rule "*tafriq baina al-halal 'ani al-haram*" is more accurately used as a mechanism to solve the question of *fiqh*. This is explained by Ma'ruf Amin that property or money in the perspective of *fiqh* is legal object property or money in the perspective of *fiqh* is not an illegal object because of its substance ('*ainiyah*) but *haram* because of its way of obtaining it which is not in accordance with sharia (*li-ghairihi*). As a result, it can separated which is obtained in a *halal* way and which is obtained in a non-halal way. Halal funds can be recognized as legitimate income, while non-halal funds must be separated and allocated for the public interest. This is in line with the opinion of Ibn Taymiyyah, who asserted: "when a person's property was mixed between *halal* and *haram* elements; the haram element must be issued nominally, and the rest halal for him (Amin, 2017a)." This theory is indicated in the fatwa of DSN MUI with the argument that sharia economic activities in Indonesia have not been able to be completely released from the conventional economic system in practice, Islamic economic institutions are systematically associated with conventional economic institutions that *usury,*a good capital, product development, as well as gains.

Third, is the rule of "*i'adah al-nadzar*" or re-study. Efforts to re-examine this were made against the opinion of previous scholars who were considered unsuitable to be guided because of difficult factors to implement (*ta'assur, ta'adzdzur aw shu'ubah al-amal*). In practice, it has been re-considered with reexamining the opinion as *mu'tamad*-consideration of legal opinions believely considered as weak notion *(marjuh* even *mahjur),* for their *'god of* the new law or opinion is more bring benefit. Then the opinion is used as a guide (*mu'tamad*) in setting the law. In detail, it can be understood that this theory is the middle path between the thinking of sharia law experts who are too loose (*mutasahil*) in applying the principles of sharia economic law. This resulted in the Islamic economy getting stuck in *labeling*. In addition, through the application of this theory, the development of Islamic economics is not too strict and tied to the rules and thoughts of classical fiqh that may be difficult to re-apply in the present era (*mutasaddid*). This theory is based on the rule: "the *law works in accordance with its gods, there is and does not exist [gods*] (Amin, 2017a)." *Fourth*, the method of *tahqiq al-manath is* divine or analysis of the determination of legal /reasons. This is an analysis to find out the existence of other legal reasons in a case, in addition to previously known reasons. This analysis is through *nash, ijma '* and *istinbath* (Amin, 2017a)*.* Why are these four fiqh traditions used as a *framework* by MUI in issuing a fatwa? The reason is somewhat simple, because basically "the economic activity of the original law is(*permissible*) as long as there is no prohibition evidence (Amin, 2017a)." But there are other meanings that can be found in understanding the tradition and reasoning *maslahah* in the fatwa published by the Indonesian Ulema Council. The meaning refers to the theory of "pragmatism of Islamic law" offered by Ahmed Fekry Ibrahim.

Did being too oriented towards reasoning *maslahah* can be categorized as legal pragmatism? This question should arise, for the reason that in general the fatwa produced by the Indonesian Ulema Council is therefore dominant based on *reasoning issues.* This makes the fatwa more visible as a response and fulfillment of public needs; and the Islamic financial industry. Ahmed Fekry Ibrahim paired the legal pragmatism with the word "eclecticism". Ahmed Fekry Ibrahim (2015) understands that pragmatism is characterized by the attitude of the *mufti* who tends not to publish strict legal opinions of people and institutions, especially on individuals who are considered weak and need legal protection (Ibrahim, 2015). Al-Fiqhi, as quoted by Fekry (2015) asserts that the choice of the mufti to respond and accommodate individual needs must be in line with the value of *maslahah* (Ibrahim, 2015). That is, *maslahah* must be above the interests of the individual, and the industry. So that the fatwa product not only responds to the needs of *fatwa* users, but must represent the true purpose of Islamic law.

Briefly, pragmatism of *fatw* refers to the motivation to produce or issue fatwas that are oriented towards the fulfillment of public needs, and Islamic financial institutions. This implies reason, and legal justification which seems to accommodate several things, namely: (i) *tatabbu 'al-rukhas*; (ii) choose the view of *marjuh* or previously weak, because

the needs and *gods* behind the opinion are considered more *maslahah* (Ibrahim, 2015)*.* Nevertheless, the choice of the Indonesian Ulema Council can only be informed because of two things, namely: *First*, the need for legal products that can accommodate the public interest (*maslahah*). Legal products that not only cater to the partial needs of legal objects. But the fatwa based on the values of *maslahah*, it makes fatwa producted being accepted by the public in general. *Second*, there is interest and support for the development of the Islamic financial industry as an alternative to replace the conventional financial system based on interest and usury. In this context, then, the fatwa of the Indonesian Ulema Council, both in the field of socio-cultural and related sharia financial products, can be accepted even with the dominance of pragmatic based on *reasoning issues.* Acceptable because the fatwa of the Indonesian Ulema Council is based on a fatwa formulated on defense and based on the main purpose of Islamic law, namely welfare.

SIMPULAN

The argumentation behind the fatwa of the Indonesian Ulema Council, can be fully identified as oriented to the *problem of reasoning.* This is caused by at least two things: *First*, there are public needs that must be responded to by giving legal opinion with regard to the benefits of fatwa users. *Second*, the need to support the development of sharia finance in Indonesia. For that purpose, financial products are needed that can serve the needs of the general public, and support the development of the Islamic economics. However, the fatwa against Islamic financial products, must be developed in a creative and based on reasoning of *maslahah,* strict and responsible. Although, this study can identify the tendencies and characteristics of reasoning fatwa Majelis Ulama Indonesia, this article does not discuss on how the implications of this reasoning on the methodology or *manhaj-istinbath* being new tradition in the Indonesian Ulama Council when issued *fatwas*. Therefore, in the future it seems that the issue can be examined by other scholars who are *concerned to* discuss and study the fatwa of the Indonesian Ulema Council.

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