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The Implementation of *Maqashid Sharia*: Heterogeneity of Scholars' Fatwas Towards Islamic Banking Contracts

Abbas Arfan[1*], Iklil Athroz Arfan[2], Abdulrahman Alkoli[3], Ramadhita[4]

[1,4] Faculty of Sharia, Universitas Islam Negeri Maulana Malik Ibrahim Malang, Malang, 65144, Indonesia

[2] School of Islamic Studies, Ibn Haldun University, Başakşehir, 34480, Turkiye

[3] Economic Development Studies, Doha Institute for Graduate Studies, Doha, 70, Qatar

* Corresponding author: abbasarfan@syariah.uin-malang.ac.id

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Abstract

This study aims to analyze the differences in fatwas among scholars in the Middle East and South East Asia (Indonesia and Malaysia) towards various Islamic Banking Contracts products and assess the implementation of maqâshid al-sharia within the variety of fatwas mentioned. This study employed a qualitative approach and fatwas from the Middle East and South East Asia as the primary data, while the secondary data were obtained from books on Muaamalah Fiqh and Islamic Banking. The data were garnered based on a literature review with a content analysis technique. The descriptive-inductive method with a reflective way of thinking is used for data exposure, leading to the following findings: 1) There are differences in fatwas towards three Islamic Banking contracts: a) The determination of the deposit contract in the Middle East is stipulated in a qardh contract in a non-investment account; meanwhile, in South East Asia it is stipulated in a wadiah contract; b) in terms of *Murâbahah contract, some of the Middle East scholars forbid it, while, some of South East Asian scholars and few scholars from Middle East allow it, and; c) in terms of the al-Ijarah al-muntahiyyah bi al-tamlik, most of Middle East Scholars forbid it, but South East Asian scholars allow it; 2) The implementation of maqâshid sharia within differences of fatwas among scholars has been appropriately implemented in accordance with Islamic law specified under contracts in Islamic banking products in Muslim countries.*

INTRODUCTION

Islamic banking has experienced significant development in Muslim countries supported by fatwas as the regulations. However, each country has its own characteristics in developing Islamic economics. Fatwa models of Eastern Muslim countries are classified into three: Muslim countries with rigidness for giving fatwas on Islamic banking, Muslim countries with the tendency to be lenient in economic fatwas, and Muslim countries with the tendency to be moderate in giving fatwas (Hadi, 2020; Salisu & Saniff, 2023). Such a difference is obvious in *tawarruq* transactions in Islamic banking. The Shariah Advisory Council of Bank Negara Malaysia (BNM) allows *tawarruq* contracts in Islamic banking (Mohamad & Ab Rahman, 2014; Ali & Hassan, 2020; Ibrahim & Mohd Sapian, 2022), while the National Sharia Council-Indonesian Ulema Council (NSC-IUC/DSN-MUI) prohibits *tawarruq* contracts in Islamic banking but allows them for commodity futures trading (Abdillah et al., 2020; Aprianto & Nazilah, 2023). In Somalia, Islamic banking has not practised *tawarruq* contracts even though they are considered beneficial for customers (Haron & Mohamed Barre, 2023).

The development of Islamic banking is faced with complex challenges. For example, the public wants the presence of various attractive and innovative Islamic banking products but still in compliance with the principles of Islamic Law (Chaudhry et al., 2020; Dinc, 2020; Rostan et al., 2021). The development of Islamic banking still needs to be balanced with regulatory support (Ahmad & Hassan, 2007; Mansour et al., 2022; Nastiti & Kasri, 2019). The integration of Islamic banking into the global economic system while adhering to sharia principles is also another significant challenge. The growth of Islamic banking is widely expected to significantly contribute to economic development (Gani & Bahari, 2021; M. Anwar et al., 2020; Rizvi et al., 2020; Saeed et al., 2023) This situation requires practitioners, regulators, consultants, sharia supervisory boards, academics in the field of Islamic finance, and scholars, especially those in fatwa institutions, to always be active and creative in providing a response (Arfan, 2017; Syuhadak, 2013).

In Islamic law, a fatwa answers the question of a religious issue. Fatwas are submitted by Muslims - individually or in communities - to a Muslim scholar or religious institution (Jalili et al., 2023; Johari et al., 2023; Suhendar et al., 2023). For a contemporary Muslim society, social problems are becoming increasingly numerous and complex. Fatwa can be used as a guide and solve the problems of the life of the Muslim community. Fatwa makes Islamic law more flexible and in line with the changing times (Azmi, 2020; Johari et al., 2023). For example, in Islamic economic development, the fatwa is needed to legitimize Islamic banking products (Izmuddin et al., 2023; Kitamura, 2022; Mansoori, 2023). Every banking activity carried out within Islamic jurisprudence parameters is called Islamic banking. In practice, Islamic banking applies solid ethical values and risk minimization principles. The Islamic banking system does not recognize the interest in lending and borrowing activities. Contrary to

the conventional investment banks in which its value is built upon 'real money'- not upon virtual activity from *swap* or *asset derivatives*. Besides, the difference between Islamic and conventional banking can be seen through their *profit* concept and *loss-sharing paradigm* (Arfan & Arfan, 2021).

Islamic banks are financial institutions that run businesses in line with Sharia principles (Amareen, 2024), such as agreements based on Islamic law between banks and other parties for depositing cash and/or funding commercial activities or other activities declared following sharia. Due to the prohibition of usury, *gharar*, and *maysir*, Islamic bank products are comparable but not identical to conventional bank products (Zubair, 2023). Consequently, Islamic banks' funding and financing products must avoid certain prohibited components (Ascarya, 2007). The products offered by Islamic banking are not much different from conventional banking in that they are divided into three major categories: products for channelling funds (financing), products for raising funds (funding), and products for services (services). The forms of fundraising products in conventional and Islamic banks are the same. Conventional and Islamic banks collect funds from the public in the form of current, savings, and time deposits. Credit products are used to channel funds to conventional banks, whereas financing products are used to channel funds to Islamic banks. The financing products available at Islamic banks are financings based on: sale and purchase, leasing, production sharing, and free-interest loan contracts (Fatriani, 2018). Most Islamic banking products available today are essentially a hybrid of conventional banking practices and economics integrated with the fundamental principles of *fiqh mu'âmalah* contracts (Islamic economic transactions) (Ascarya, 2007). However, their flexibility makes Islamic banking products much broader and more diverse than conventional ones (Parsa, 2022). Several Islamic banking products are not well-known in conventional banking, such as pawn transactions *(rahn)*, leases *(ijarah)*, benevolent loans *(qardh hasan)*, and others (Agustin & Hakim, 2022).

Islamic Law, which cannot be detached from religious arguments in its stipulation, suffers serious problems when facing rising problems, particularly when confronted with economic and business problems with its institutions, namely Islamic Banking because the two significant propositions of religion, as presented in Qur'ân and Sunnah writings, are restricted and stagnant, but people's lives are boundless and dynamic. As a result, renewing the theory of establishing Islamic law via the door of ijtihad is considered an alternative that may solve various societal problems (Arfan, 2015). Implementing *maqâshid sharia* components into fatwas on Islamic Banking products is one of the efforts to address this challenge (Taufik et al., 2023).

Maqâshid sharia is an approach through benefit-oriented (*mashlahah*) analysis *(manhaj istishlâhi)*, often called *manhaj al-maqâshidi*, namely the principles for evaluating the legal position of various occurrences while taking into account the benefits for human life that will be generated by the formulation of this legal thought. *Maqâshid*

sharia is often referred to as the goal of Islamic Law which is actualized through the reflection of fundamental values in Islamic law, consisting of preserving religion, soul, reasons, heredity, and property (Absori et al., 2016; Yasin, 2021).

The Islamic economic and financial system, both its products and institutions (Islamic banking), is a system that always refers to *maqâshid* sharia, namely public benefit (*mashlahah*), and therefore the Islamic economic system rejects the postulates put forward by neo-classical economists who are only oriented to maximizing personal needs. Umar Chapra stated that the purpose of sharia (*maqâshid* sharia) is to attain *falâh* (human happiness) and *hayatan thayyibah* (pleasant life) within the confines of sharia. The fundamental component in achieving this *falâh* is spiritual improvement (Chapra, 2016; Kusnan et al., 2022). As a result, this study was conducted to determine and compare the differences in fatwas among scholars from the Middle East and South East Asia (Indonesia and Malaysia) on several contract products in Islamic Banks and investigate how *maqâshid* sharia reflected in the diversity of fatwas among scholars is implemented. This paper aims to study the implementation of *maqâshid al-syarî'ah* reflected in the differences in fatwas among contemporary scholars in various Muslim countries within the context of varied contracts in Islamic banking products.

METHODS

This research employed a qualitative approach, leveraging a diverse range of primary data sources, including fatwas issued by scholars from the Middle East and Southeast Asia, particularly Indonesia and Malaysia, alongside pertinent journals exploring *maqâshid al-syarî'ah* and contracts of Islamic banks. Additionally, secondary data from authoritative texts on Fiqh Mu'amalah and Islamic Banking were utilized. The research methodology involves conducting a comprehensive literature review to inform the identification and framing of research questions. These questions are then addressed through two distinct analytical methods: firstly, employing a comparative approach grounded in *fiqh* and *Ushul fiqh* to tackle the initial problem formulation; secondly, utilizing content analysis, as defined by Klonderhorf, to delve into the symbolic meanings and attitudes reflected in the gathered data, derived from both primary and secondary sources. Data collection was facilitated by a descriptive-qualitative technique, aiming to provide a systematic, factual, and accurate portrayal of the phenomena under investigation, including the relationships between various elements. Given the qualitative nature of the data, analysis was conducted through a qualitative lens, guided by both deductive and inductive reasoning, fostering a reflective interpretation of the findings. This methodological approach ensures a rigorous and nuanced exploration of the research questions, offering valuable insights into the intricacies of Islamic banking practices and their alignment with ethical and legal frameworks.

RESULTS AND DISCUSSION

Understanding *Maqâshid* Sharia

In general, the methods developed by scholars to explore (*istinbâth*) Islamic law as studied in classical *fiqh* proposals can be divided into two major parts, namely the literal method *(tharîqah lafdhiyyah)* and the method of argumentation or extensification *(tharîqah ma'nawiyyah)*, but both aforementioned methods when they are broken down, will lead to three analytical approaches that Ulama *Fiqh* scholars have developed in conducting legal studies: 1) an approach based on linguistic rules *(qawâ'id al-lughah)*; 2) an approach based on *'illah al-hukm* analysis *(manhâj ta'lîlî)*; and 3) an approach based on *mashlahah* (public interests) analysis *(manhâj istishlâhî)*, also known as *manhâj al-maqâshidî* (Umar, 2007).

The term *maqâshid* sharia is not new to Islamic Law studies, with figures ranging from classical to modern. It has become a significant theme in the discourse of Islamic legal thought and has taken on a central role. As a result, it is not surprising when scholars discussed *maqâshid* as was done by al-Imâm al-Juwaynî (d. 478 H), al-Ghazâlî (d. 505 H), al-Râzî (d. 606 H), al-Amidî (d. 631 H), al-'Izz bin 'Abd al-Salâm (d. 631 H), al-Qarâfî (d. 685 H), al-Thûfî (d. 716 H), Ibn Taymiyyah (d. 728 H), al-Syâthibî (d. 790 H), Muhammad Thahîr Ibn' Asyûr (d. 1393 H), Muhammad Said Ramadhan al-Bûthî (d. 2013 M), and most recently Jasser Auda (Fauzan & Imawan, 2023; Hamid, 2017; Ma`rufi, 2019; Rohman, 2017; Rozi et al., 2022; Sulihkhodin, 2021; Syihab, 2023).

Maqâshid, from an etymological view, is the plural form of *maqshid*, which means benefit, objective, principle, intent, target, ultimate goal, and other similar terms. While in a terminological view, it is defined as "the meanings (understanding) desired by the syâr'I (Allah and His Messenger) to be realized through *tasyrî*' and the determination of the laws that are *istinbâth* (taken) by the mujtahid through sharia texts" (Hanapi et al., 2022; Auda, 2008). Al-Juwaynî, whom some experts, such as Auda, consider to be the first scholar to offer the concept of *maqâshid*, sometimes refers to *maqâshid al-syarî'ah* with the term *mashlahah 'âmmah* (public benefit) (Arfan, 2015).

In Islamic literature, *maqâshid* can be written in a variety of ways, including *maqâshid al-syâri'*, *maqâshid al-syarî'ah*, and *al-maqâshid al-syar'iyah*. The various forms of these expressions all essentially mean the same thing: the purpose of establishing Islamic law. Scholars generally interpret *maqâshid al-syarî'ah* as the essence of establishing Islamic law.' Alâl al-Fâsî, as quoted by al-Raysûnî, said, "What is meant by *maqâshid al-syarî'ah* is the purpose of sharia and the secrets that have been determined by *al-syâri'* (God) in every provision of His laws"(al-Raysuni, 1981). The key principle of *maqâshid al-syarî'ah* is to emphasize the importance of generating benefit and rejecting harm (Tohari et al., 2022).

Mashlahah, etymologically in Arabic, means benefit; kind; or interest (Fariana & Sufiarina, 2019). In Bahasa Indonesia, it is often written and called *mashlahah* (the antonym of *mafsadah*) meaning something that brings goodness; (safety, and others);

benefits; or interest. Several points of contention regarding the definition of *mashlahah* in the terminology of *fiqh* scholars and their division have been raised. al-Ghazâlî, in explaining the meaning of *mashlahah*, stated, "*mashlahah* is basically an illustration of gaining benefits or avoiding *mafsadah*", but the *mashlahah* viewed by al-Ghazâlî in this context is not in the linguistic sense which is commonly used in society or according to 'urf (customs) meaning benefit or something useful, but in terms of sharia, meaning maintaining religion, life, mind, lineage, and property (Kudaedah, 2020). Hence, the meaning of *mafsadah* is something that can harm one out of those five things with the term *al-maqâshid al-syarî'ah* according to Syâthibî or with the term *al-ushûl al-khamsah* as viewed by al-Ghazâlî or with other terms, such as *al-kulliyât al-khamsah*, or *al-ushûl al-syar'iyyah* or *al-dlarûriyyât al-khamsah*. As a result, a benefit, according to al-Ghazâlî, must be in accordance with Sharia law, even if it must or will conflict with interests (Tarmizi, 2020).

Unlike al-Ghazâlî, Najm al-Dîn al-Thûfî does not limit *mashlahah* to what has been limited by sharia. Therefore, al-Thûfî bases the concept of *mashlahah* and *mafsadah* on four principles: 1) reasons can freely know the benefits and *mafsadah*; 2) *mashlahah* as a sharia proposition apart from texts, with the understanding that the provisions regarding *mashlahah* and *mafsadah* are only related to custom and human experience; 3) the scope of *mashlahah* and *mafsadah* is limited in terms of *mu'âmalah* and custom; 4) since *mashlahah* and *mafsadah* can be known spontaneously by using reasons, *mashlahah* is the most potent proposition of sharia. Therefore, if a contradiction between the text and *mashlahah* arises, *mashlahah* must be applied with *takhshîsh* (taking a special meaning) or bayân (detailed explanation) of the meaning of the text rather than cancelling it (Yusdani, 2000)

Maqâshid al-syarî'ah provides a perspective of reasoning in solving problems of Islamic law, especially *mu'âmalah* laws in the context of a pluralistic religious life of the people (Asa'ari et al., 2021; Kholish et al., 2020). The application of *maqâshid al-syarî'ah* in fatwas issued by scholars has a very important significance in the context of sustainability and justice in Islamic society (Matsum, 2023; Herliana, 2023). *Maqâshid al-syarî'ah* provides a holistic framework to ensure that fatwas not only fulfil the requirements of Islamic law but also strive to achieve the welfare of the *ummah* (Mahmudah et al., 2022). By taking these aspects into account, scholars can produce fatwas that are relevant and adaptive to the times, avoid social disparities, and promote justice, peace, and prosperity for Muslims as a whole (Adinugraha et al., 2023; E. E. Yakar, 2021).

In addition, the application of *Maqasid Sharia* in fatwas also helps maintain the integrity of Islam as a religion that is *rahmatan lil 'alamin* (Aibak, 2023; Anggraini, 2020). By placing the universal principles of justice, freedom and humanity at the centre of fatwas, scholars not only strengthen Muslims' trust in religious authority but also prove the relevance and progress of Islam in solving contemporary problems (Khan & Bakar,

2022; S. Yakar & Yakar, 2021). Thus, the application of *maqâshid al-syarî'ah* not only strengthens the foundation of Islamic law but also ensures that fatwas issued by scholars make a positive contribution to achieving Islam's fundamental goals of safeguarding the welfare and justice of all humanity (Irawan et al., 2020).

There are several steps to implement *maqâshid al-syarî'ah* as a method of reasoning in Islamic law to arrive at efforts to establish Islamic laws. ***First***, in *istinbâth* (concluding) Islamic law, a mujtahid or scholar must focus his attention on the purpose of the law *(maqâshid)* contained in the Qur'an and al-Sunnah, not the letters and characters. However, the purpose of the law itself should be the central axis. It is how to find and formulate legal, moral ethical ideals from a verse or sunnah, in this case, rather than specific legislation or literal formulation (Moqsith, 2005). ***Second***, in terms of making *mashlahah* a legal umbrella, Islamic law has no other purpose except for actualizing benefit *(jalb al-mashâlih)* and rejecting all forms of harm *(dar'u al-mafâsid)*, however, scholars differ in opinion about which is more important; whether realizing the benefit or rejecting the misfortune. Some scholars argue that rejecting misfortune takes precedence over realizing benefits, so a famous *fiqh* rule was born: *dar'u al-mafâsid aula min jalb al-mashâlih* (rejecting *mafsadah* is more important than attracting *mashlahah*) (Arfan, 2013a). This paradigm by Moqsith Ghazali (2005) is formulated with the phrase *"naskh al-nushush bi al-mashlahah.*" This "rule" paradigmatically states that texts, both in the Qur'an, Hadith, and other texts *(ijmâ' ulamâ)*, can be cancelled by *mashlahah*. That is, *mashlahah* reasoning is stronger when used as evidence than textual reasoning (*nash*). We, however, stand against what Ghazali views above because among the criteria of justified and acceptable *mashlahah* is the benefit that does not conflict with shara' (Arfan, 2013b), so it is impossible for a *zhanni mashlahah* (conjecture) to cancel and delete the *nash* al-Qur'an which is *qathi'* (certain), especially the *muhkamât* verses (not multi-interpreted) or the Prophet's Hadith which is valid, especially the *mutawâtir*.

Third, in terms of amending (cancelling) religious "dogmatic" provisions in the Qur'ân and al-Sunnah concerning public affairs, according to Moqsith Ghazali (2005), when a conflict between public reasoning and literal textual understanding takes place, public reasoning has the authority to refine or modify it. Refinement or modification of this can be done with *tanqîh* (sorting out) in the form of *taqyîd bi al-'aql* (limitation with reason), *takhshîsh bi al-'aql* (specialization with reason), and *tabyîn bi al-'aql* (explanation with reason), which is methodologically formulated by the phrase *"tanqîh al-nushûsh bi al-'aql al-mujtma'"* (sorting of teaching texts by public/societal reason).

As a result, we agree with the three steps set by Ghazali above to implement *maqâshid al-syarî'ah* as a method of reasoning Islamic law so long as three conditions are met as the criteria of *mashlahah* as decided by the Indonesian Ulema Council (MUI) in the VII National Conference in 2005, in the Decision No. 6/MUNAS/VII/MUI/10/2005 providing the following criteria for *mashlahah*: 1) the benefit according to Islamic law is the achievement of the purpose of sharia (*maqâshid*

al-syarî'ah), which is realized in the form of maintaining the five primary needs *(al-dharûriyât al-khams)* consisting of religion, soul, mind, property, and offspring; 2) the benefit that is justified by sharia does not conflict with the text and; 3) the right to determine the *mashlahah* and not something according to sharia is an institution that has competence in the field of sharia and is carried out through *ijtihâd jamâ'i* (collective ijtihad).

The Comparative Analysis of Differences among Scholars' Fatwas

1. Deposit Contracts in Islamic Banks

One of the primary functions of conventional and Islamic banks is to collect funds from the general public via deposit products. According to Kasmir (2012), the definition of savings is "funds entrusted by the public to be deposited at the bank and managed in the form of deposits, such as current, savings, and deposit accounts and are to be returned by channelling the funds to the community." Meanwhile, Banking Law No. 10 of 1998, Article 1 point (5), concerning amendments to the Banking Law No. 7 of 1992, states that: "Savings are funds entrusted by the public to banks based on deposit agreements in the form of checks, deposits, certificates of deposit, savings and or other forms equivalent to that."

These definitions above imply that deposits are funds entrusted by the public to banks based on specific agreements. In other words, public savings are a collection of resources in the form of public funds entrusted to banks and successfully collected by banks based on a particular agreement made by banks and depositors (customers) that can be used by banks per their legal duties and functions. Banks can use three types of savings accounts to obtain public funds: demands, savings, and time deposits.

Meanwhile, those three savings—demand deposits, savings, and deposits—according to Banking Law No.10 of 1998, which is also cited as a definition by the DSN-MUI fatwa No. 01/DSN-MUI/IV/2000 concerning demand deposits, are defined as "savings whose withdrawals can be made at any time by using a check, other means of payment orders, or by way of transfer." As for Savings, according to DSN-MUI fatwa No. 02/DSN-MUI/IV/2000 on Savings, "savings that can only be withdrawn under certain agreed conditions, but cannot be withdrawn by check, or other equivalent means." In comparison, "the withdrawal of deposits (time savings) can only be made at a specific time based on an agreement between customers and the bank" as in the DSN-MUI fatwa No. 03/DSN-MUI/IV/2000 concerning Deposits.

As previously stated, the products in Islamic banking are not significantly different from conventional banking; instead, it is kind of a duplicate of conventional banks in their terms and operations. The fundamental and obvious distinction between the two is that in Islamic banks, contracts are drafted under sharia as outlined in classical *mu'âmalah fiqh*. As a result, it is fair to say that the formation of modern

mu'âmalah fiqh results from the integration of science (conventional economics and banks) and Islam (Islamic Sciences and classical *mu'âmalah fiqh*).

Meanwhile, conventional banking lacks clear and Sharia-compliant contracts because all products and operations are interest-based, for both products that collect public funds (deposits) and products that channel public funds (credit), where this interest may also apply to the three types of deposit products mentioned above. Meanwhile, Islamic banking has clear and sharia-compliant (interest-free) contracts for the three types of deposit products regardless of the terms they use: demand deposits, savings, and time deposits.

Indonesian scholars who have been selected as of the DSN-MUI have selected and determined the contracts that are considered the most suitable and in accordance with sharia to be applied in these three deposit products in Islamic Banks. Two contract options are available for customers: a *mudhârabah* (profit and loss sharing) contract or *wadî'ah* (deposit/entrust) on current and savings accounts, while there is only a *mudhârabah* contract for deposit accounts. The DSN-MUI/IV/2000 fatwa decisions number 1 (concerning demand deposits), 2 (concerning savings), and 3 (concerning deposits) determine that demand deposits, savings, and deposits based on interest calculations are not justified (*haram*) in sharia (as applicable in conventional banking). Demand deposits and savings based on the principles (contract) of *mudhârabah* and *wadî'ah* are justified according to sharia, whereas deposits are only based on the principle (contract) of *mudhârabah*.

Most Arab countries, including Egypt, Kuwait, Jordan, and others, only recognize two types of deposit products, namely demand deposits and time deposits, because they classify these funds only into two types: deposits for investment purposes and non-investment, with demand deposits intended for customers who do not intend to invest their savings and deposit accounts intended for customers who do. A demand deposit account is defined as cash kept in an Islamic bank by the owner without imposing any profit on the customer so that the Islamic bank obtains ownership of these funds to be able to manage its use with full guarantee from the Islamic bank side regarding the existence of these deposit funds, which the owner can withdraw at any time. In modern Arabic, this account is known as *al-hisâb al-jârî*/*al-hisâbât al-jâriyyah* (current account) or *al-hisâb*/al-*wadî'ah taht al-thalab* (account/safe deposit upon request). It derives its name from its nature, which keeps it in constant motion with the ups and downs caused by withdrawals, deposits, and financing operations.

Because of the nature mentioned above of current accounts, namely that Islamic banks can use deposit funds with full guarantees, allowing customers to withdraw funds at any time, most scholars and fatwa institutions in several Arab countries determine that a *qardh* (debt/loan) contract, compared to a *wadî'ah* contract, is the most appropriate contract for a demand deposit account. If a *wadî'ah* contract is used, the

Islamic bank may not use the funds without the customer's permission, and the Islamic bank does not fully guarantee the funds against damage (such as loss) unless there is an element of negligence from the Islamic bank. Most Islamic economics researchers and Sharia supervisory bodies believe that the al-*qardh* contract is the best contract for a demand deposit account in Islamic banks, as according to Majma' al-*Fiqh* al-Islâmî al-Daulî (International Islamic *Fiqh* Council), Haiat al-Muhâsabah wa al-Murâja'ah li al-Muassasât al-Mâliyyah al-Islâmiyyah (Accounting and Auditing Organization for Islamic Financial Institutions), the decision of the al-Barakah Symposium on Islamic Economics and the Sharia Council of al-Bilâd Bank. In its fatwa decision, the International Islamic *Fiqh* Council Resolution No. 90/3 / D9 states that demand deposits at Islamic banks or interest-based banks (conventional) are loans (*qardh*) in the perspective of Islamic jurisprudence because the bank that accepts these deposits provides guarantees. It is obligatory according to sharia for the bank to return customer deposit funds at their request, regardless of the bank's condition and reputation.

Deposit contracts in Islamic banking products in Sudan are determined in the same way in Indonesia as in *mudhârabah* and *wadî'ah* contracts (Ascarya, 2006), rather than a *qardh* contract as used by sharia banking in the Middle East in general. Likewise, Malaysia uses *mudhârabah* and *wadî'ah* in Islamic banking savings products (Ascarya, 2006). While the arguments used by each of the two different opinions both refer to the Qur'an and Hadith, they differ in the use of *fiqh* rules. Ulama in Indonesia, Malaysia and Sudan use the *fiqh* rule *"al-ashl fî al-mu'âmalât al-ibâhah illa an yaulla al-dalîl 'alâ tahrîmiha* (the law of origin for all types of transactions in *mu'âmalah* is permissible, as long as no argument forbids it)." However, scholars in the Middle East use the *fiqh* rule *"al-ma'rûf 'urfan ka al-masyrûth syarthan* (something that has been known by *'urf* (custom) is like something that is required) (Arfan, 2021).

2. *Murâbahah* Contract in Islamic Banks

Etymologically, *murâbahah* is *isim mashdar* derived from the words *râbaha-yurâbihu-murâbahah*, which means to profit from buying and selling as it is generated from the word *ribh*, which means profit (Aldizar & Agustina, 2022; Rahman & Ismail, 2023). Whereas the terminological definition of *murâbahah*, according to *fiqh* scholars, is very diverse, all of these definitions boil down to one core equation, namely selling something with profit whose value is known to the buyer, as al-Dasûqi defines *murâbahah* as a sale at the purchase price of the goods along with a known profit (Dasuki, n.d.)

In the application within Islamic Financial Institutions (IFI) in Indonesia (Yuspin, 2022), *murâbahah* is defined as a sale and purchase transaction of an item at the acquisition price of the goods plus a margin agreed upon by the parties, where the seller (IFI) informs the buyer (customer) of the purchase price in advance (Audria &

Adinugraha, 2021). The application of the concept of *murâbahah* in Islamic banking concerning scholar views has undergone several changes. *Murâbahah* is known as *murâbahah li al-âmir/al-wâ'id bi al-syirâ'* (*murâbahah* with orders/promises to buy) in IFI. Contemporary scholars' legal positions on the practice of *murâbahah li al-âmir bi al-syira'* differ. Some allow it, while others prohibit it or even consider it *haram* (Hilali, 2010).

Murâbahah application in Islamic banking is classified into three (3) types. The first type, classic or *basîth* (simple) *murâbahah*, which is consistent with *mu'âmalah fiqh*; this type cannot be used in Islamic banking, although the name of the contract that is practised is *murâbahah* as written in the DSN-MUI fatwa and not *murâbahah li al-âmir bi al-syira'* as written in the fatwa in Arab countries. This is because, in classic *murâbahah* practice (*basîth*), only two (two) people/parties are involved in the transaction, namely the seller and the buyer. In contrast, in Islamic banking, three parties are involved. As a result, in the DSN-MUI fatwa and sharia banking products, the name of this contract should be *murâbahah li al-âmir bi al-syira'*.

The second type is similar to the first, except that the ownership is transferred directly from the supplier to the customer. At the same time, the bank makes payments directly to the first seller/supplier. The third type is the most commonly used by Islamic banks, in which the bank enters into a *murâbahah* agreement with the customer as well as represents (wakalah contract) to the customer to purchase the goods themselves. This type is the subject of debate in contemporary *mu'âmalah fiqh* among contemporary Islamic scholars because there are fundamental differences in classical *mu'âmalah fiqh* despite similarities in some aspects of the transaction.

In general, *murâbahah*, both classic and contemporary, is a contract of sale and purchase of goods that specifies the acquisition and profit (margin) agreed upon by the seller and buyer. This contract is a type of natural certainty contract (it provides financing certainty both in terms of amount and time, and the cash flow can be predicted with relative certainty because it has been agreed upon by both parties who transact at the beginning of the contract). *Murâbahah* is classified as a natural certainty contract because the required rate of profit (the amount of profit agreed upon) is determined (Karim, 2003). The *murâbahah* product at Islamic Financial Institutions is one of the products channelling funds to the public for financing (loans) to customers for consumptive (not productive) purposes, usually for the short and medium term.

In general, the law of *mu'âmalah* contracts in the decision of the DSN-MUI fatwa No: 04/DSN-MUI/IV/2000 concerning *Murâbahah* is permissible; however, the *murâbahah* in question is not a classic *mu'âmalah* as stated in classical *mu'âmalah fiqh*. This means that the contract used is a contemporary contract known as *murâbahah li al-âmir/al-wâ'id bi al-Syirâ'* in fatwas of the Islamic world. *Murâbahah* financing is the provision of funds or bills from Islamic banking for the sale and purchase of goods ordered/requested by the customer at the cost of goods sold plus a profit margin based on an agreement between the two parties requiring the customer to reimburse his debt

per the terms of the contract set by Bank Indonesia (BI) per the provisions of the DSN-MUI fatwa.

There are 2 (two) types of patterns/schemes for the implementation of *murâbahah* financing as stipulated in the DSN-MUI fatwa after the customer makes a commitment/agreement with the Islamic bank to be willing to buy the goods ordered: a) the Islamic bank buys the goods themselves (orders) from a third party (manufacturer/supplier), then the goods are sold to the customer (subscriber) using a *murâbahah* contract with a payment system that is usually done in instalments, and; b) the Islamic bank represents the customer himself to buy the goods from a third party on behalf of the Islamic bank, then the goods are legally owned/controlled by the Islamic bank, then they are sold to the customer using a *murâbahah* contract.

According to most fatwa institutions around the world, this *murâbahah li al-âmir/al-wâ'id bi al-syirâ'* agreement is permissible with several provisions, including the fatwa of the International Islamic Jurisprudence Council in the fifth conference in Kuwait on Jumadi al-Awwal 1409 H, which coincided with the issuance of a decision on December 10-15 1988 AD: "contract agreement to buy (goods ordered by the customer) with a *murâbahah li al-âmir/al-wâ'id bi al-syirâ'* contract after (the Islamic bank) owns the goods and obtains (ownership) as required by law, then this is a sale that is permitted (by the sharia), as long as the Islamic banking (seller) is fully responsible for damage before delivery and the consequences of receiving a return/exchange of goods with hidden defects *(khiyâr al-'aib)*" (al-Sâlûs , 2010).

However, according to Hilali (2010), some contemporary scholars, particularly from Saudi Arabia, such as Nâshr al-Dîn al-Albâni, Muhammad al-'Utsaimîn, and others, consider *murâbahah* contract *li al-âmir/al-wâ'id bi al-syirâ'*, which is widely practised in sharia banking in many countries, is unlawful according to sharia with 4 (four) arguments underlying their legal reasoning: a) This transaction is classified as *hilah* (ploying/deception) to obtain (hidden) profit, which is classified as usury because the majority of those who use this *murâbahah* contract do not intend (want) to buy/own goods (which become the contract's object) but only the money. They demonstrate this by selling the goods to others in cash and at low prices after receiving them from Islamic banks; b) This transaction rests on an uncertain and *gharar* (vague) foundation because customers occasionally break their commitments to purchase ordered goods. Additionally, given that the customer has purchased ordered goods that he later cancelled on his own, the Islamic bank side may receive damage *(madhârât)*; c) This transaction falls under the category of buying and selling, which the Prophet Muhammad SAW forbade in a Hadith attributed to Hâkim bin Hazâm RA, according to which the Prophet SAW said: "Do not sell something that is not on your side." As Islamic banks have ensured that they enter into a *murâbahah* sale and purchase contract with customers before owning a *murâbahah* object even though they are still in the promise phase to buy the object, and; d) This transaction is classified as the purchase

and sale in instalments model. This model is still considered a model whose legality is still being debated by scholars since there will be an additional price.

Sharia banking in Sudan uses a simple *murâbahah* contract as one of its financing instruments when the seller sells his goods to the buyer at a price according to the acquisition price added with the desired profit margin. That is, Islamic Banks in Sudan act as sellers who have provided goods that will be purchased by customers. Contrary to the practice in Indonesia, Islamic banks often encourage customers to buy goods that customers want. Therefore, *murâbahah* practised by Islamic banks in Sudan has different characteristics or provisions from *murâbahah* in Islamic banks of other countries. Some differences in characteristics or provisions are as follows: 1) Islamic banks have a stock of goods to be sold; 2) Islamic banks' profit margins are limited; and 3) *Murâbahah's* portfolio is limited (Ascarya, 2007).

In Malaysia, a *murâbahah* contract is often referred to as *Bai' Bithaman Ajil*/BBA (sale and purchase at a deferred time), which is often abbreviated as BBA; It is a *murâbahah* sale and purchase contract (cost + margin). When payments are made in deferred and in instalments over a long period, it is also called long-term *murâbahah* credit. The credit *murâbahah* contract is the same as the *murâbahah* contract for the customer. Therefore, BBA is a sale and purchase agreement, not a loan. In buying and selling BBA, four processing steps are performed: a) The customer identifies asset X, that he wishes to own or purchase; b) The bank purchases the asset that the customer desires from the owner of asset X, for example, for IDR 100 million; c) The bank sells asset X to the customer at a selling price equal to the acquisition price plus the profit margin desired by the bank for Rp. 120 million; and d) The customer pays the price of asset X as much as Rp. 120 million in installments according to the agreement (Ascarya, 2007).

The BBA contract still meets the sharia requirements up to this point. However, in practice, the customer and the bank enter into a sale and buyback contract. In classical *fiqh* terms, it is called *bai' al-'înah*/*bai' al-wafâ*, which is reflected in the Property agreement Purchase Agreement (PPA) and Property Sale Agreement (PSA). In PPA, Banks purchase assets from customers, and the customers must purchase assets previously sold to the bank. The money paid by customers will be forwarded to the initial owner of the asset by the bank. After acquiring assets, the bank resells them to customers through PSA (Ascarya, 2007).

3. The Contract of *al-Ijârah al-muntahiyyah bi al-tamlîk* in Islamic Banks

The term *al-Ijârah al-muntahiyyah bi al-tamlîk* consists of 3 (three) keywords: *al-Ijârah, al-muntahiyyah* and *al-tamlîk*. According to the dictionary, *al-Ijârah* means rent (if the object is goods) or wages (if the object is a service), *al-muntahiyyah* means ended, and *al-tamlîk* means owned/possessed. As a result, the etymological definition of *al-*

Ijârah al-muntahiyyah bi al-tamlîk is a lease agreement that ends in ownership, also known as a lease purchase, while the terminological definition according to contemporary *fiqh* scholars, *al-Ijârah al-muntahiyyah bi al-tamlîk*, sometimes called *al-Ijârah wa al-iqtinâ'*, is defined as "leasing between the owner of the leased object and the lessee to get compensation for the leased object leased with the option of transferring the ownership rights of the leased object either by sale and purchase or gift (*hibbah*) at a certain time according to the lease agreement"(Juniyantika, 2023).

al-Ijârah al-muntahiyyah bi al-tamlîk, which is often abbreviated as IMBT, is a multi-contract that contemporary *fiqh* scholars are debating because IMBT is a combination of two contracts (a lease contract and a *hibah* or sale contract) in one transaction, one of which is a contract (*hibah* or sale and purchase contract) that depends on a condition or is together with a condition (agreement) in the form of payment of rental fees within a certain time. The existence of this condition in this IMBT can be translated indirectly as the lessee asking the landlord for a condition of the landlord's obligation to sell or grant the leased object to the lessee at the end of a certain agreed period (al-Imrani, 2010).

The fatwa states that using the IMBT contract in an Islamic Financial Institution product is permissible, as stated in DSN-MUI fatwa No: 27/DSN-MUI/III/2002 on IMBT. The DSN-MUI determines a fatwa on IMBT using two approaches at the same time: the textual *qath'i* (definitive) approach (al-Qur'an and sunnah) and the *qauli* approach (the opinions of the mujtahids)—*fiqh*/scholars' opinion and *fiqh* principles. Meanwhile, in the Middle East, contemporary scholars are still debating the permissibility of IMBT rulings from a *fiqh* perspective. The Majlis Hay'ah Kubbâr al-Ulamâ' (Senior Ulama Council) fatwa decision number 198 dated 6 Dzul Qa'dah 1420 H stipulates that IMBT is illegal because IMBT is classified as a *gharar,* and multi-contracts in IMBT are of the al-mutanâfiyah type—two contracts with contradictory legal consequences, making their combination difficult. The assembly decided to prohibit the IMBT contract based on three (three) arguments:

First, this contract combines two contracts on one object, each with different legal consequences and contradicting the other. This means that the sale-and-purchase contract requires the transfer of property objects and benefits to the buyer. At the same time, the lease contract for the sale contract's object is invalid because it belongs to the buyer (after the IMBT contract occurs). On the other hand, a leasing contract requires the transfer of property benefits only to the lessee, while the objects remain the lessor's property.

Second, rental costs that are paid in instalments every year or month with a certain number of instalments that must be paid according to the contract until it is paid off are claimed by the lease seller as a rent contract only (not sale and buy instalments), so the lease buyer has no right to sell the object of the contract before it is paid off. For example, if the agreed-upon value of the objects in the IMBT contract is fifty thousand

riyals and the monthly instalments – in a rental-only contract – are usually one thousand riyals, but in an IMBT contract the rent is two thousand riyals, then the IMBT instalment value is, in essence, part of the total price instalments until it reaches the agreed-upon value. Then, in the case of the IMBT tenant having difficulty paying the instalments although it is the last instalment, the object can be withdrawn from the tenant's hands because its legal status is an object for rent, and no payment for the rent is made to the lessee because he has already taken usufruct of the object. As a result, there is no doubt that the tenant will lose his rights and money notwithstanding one remaining instalment.

Third, this contract and other similar kinds cause poor people to become entangled in debt until it piles up to the point where many of them become trapped and run out, and it can even cause bankruptcy for some debtors due to the loss of their rights due to debt. Some scholars who are vehemently opposed to the IMBT contract have only two (two) arguments: the proof of *naqli* (revealed knowledge) in the form of Hadiths of the Prophet Muhammad SAW and the arguments of the *aqli* (reasoning). The hadiths explain why the Prophet Muhammad SAW forbade multi-contracts. For example, Ahmad bin Hanbal and al-Tirmidzî narrated from Abû Hurairah RA that the Prophet SAW prohibited two contracts in one object. The logical argument is that the sale and purchase contract's legal consequence is transferring the object's property rights from the seller's hands to the buyer's. Furthermore, contracts with the intention of transferring property rights cannot be tied to anything and changed in the future because the transfer of property rights can only occur with willingness. *Ridha* (willingness) can only be realized when there is certainty and handover simultaneously. As a result, if the sale and purchase agreement includes deferred ownership of the object by hanging it on something or in the future, it negates the essence of property rights in buying and selling. Because the contract has an impact on whether or not ownership rights exist, it is classified as *gharar* (fraud) and *jahâlah* (unclear) (Hilali, 2010).

In Sudan, Islamic banks do not use this IMBT contract because scholars prefer an opinion that forbids IMBT, as is the fatwa of most Middle Eastern scholars. In Malaysia, however, an IMBT contract is permitted, but it is referred to as an *Ijârah Thumma Bai'* (ITB) contract, meaning rent followed by purchase (Ascarya, 2007). As a result, IMBT and ITB contract practices are slightly different, where both contracts are initiated by an *Ijârah* (rent) contract, but the latter is classified as a slightly different *tamlîk* (ownership) process. Furthermore, the IMBT allows for a grant (*hibbah*) or a sale and buy contract, whereas ITB only stipulates a sale and buy contract as the second process for customer ownership of the object of the contract.

The Implementation of *Maqâshid al-Syarî'ah* in Fatwas

As for the implementation of *maqâshid al-syarî'ah* in the comparison of differences of opinion in the fatwas of the scholars above, it is in line with the goals of

shariah: an earnest effort from the scholars in several Muslim countries to perform *jalb al-mashâlih wa dar'u al-mafâsid* (withdrawing benefits and rejecting harms) as in the *al-dlarûriyyât al-khamsah* structure (the five primary needs): maintaining religion, soul, intellect, lineage, and property. Even in some cases, efforts are being made to elevate *al-hâjiyât* (secondary needs) to the level of *al-dlarûriyyât* (primary needs). If necessary, in certain situations and conditions, the scholars make the *fiqh* rule as follows: *al-hâjah tunazzal manzilah al-dharûrah 'âmah aw khâshah* (secondary needs can be positioned as primary needs in general or in particular condition) as one of the rules in *maqâshid syarî'ah.*

Therefore, among the many *fiqh* rules used by scholars as evidence in establishing contracts in Islamic banking are *fiqh* rules that are oriented to *maqâshid syarî'ah*, such as the rule: *ainamâ wujidat al-mashlahah fatsamma hukm Allah* (where there is a benefit, there is the law of Allah). Even though scholars' fatwas differ in determining a contract in Islamic banks, all of them are correct in their respective considerations of benefit and ijtihad, as stated in a Hadith: "If a judge judges a problem and then makes ijtihad, then he is right, and he receives two rewards. If he judges a problem and performs ijtihad and is incorrect, he is rewarded with one reward" (Hidayat & Jafar, 2021; Qasim et al., 2023).

For example, the fatwa of Indonesian Ulama (DSN-MUI), Malaysia, and Sudan specifies that one of the deposit contracts in demand and saving accounts is a *wadi'âh* (deposit) contract. In contrast, the fatwa of Middle Eastern scholars specifies it as a *qardh* (debt) contract. They all base their fatwas on the Qur'an and Hadith, but their application of *fiqh* principles varies. DSN-MUI employs *fiqh* principles emphasizing that *"al-ashl fî al-mu'âmalât al-ibâhah illa an yaulla al-dalîl 'alâ tahrîmiha* (the law of origin for all types of transactions in *mu'âmalah* is permissible, as long as no argument forbids it)." Nevertheless, Middle Eastern scholars use the *fiqh* principles as a legal foundation, *"al-ma'rûf 'urfan ka al-masyrûth syarthan* (something that has been known by *'urf* (custom) is like something that is required)."

The two principles of *fiqh* are equally oriented towards *maqâshid al-syarî'ah*, which is *mashlahah* (benefit); the first principle is following the Hadith of the Prophet SAW: "....He (Allah SWT) also keeps quiet about some things - because of his affection (*rahmah*) for you, he does not forget -, so do not discuss it." (Hadith Hasan, al-Daruquthni no. 4316 and others). This demonstrates that a *maskût* (sharia-disregarded) ruling is permissible because it is God's mercy for the benefit of humankind, allowing them not to be burdened with many rules in *mu'âmalah*. The DSN-MUI has used these *fiqh* principles the most frequently in issuing fatwas, with a rate of more than 90% from the first fatwa to 156 fatwas issued between 2000 and 2023. Meanwhile, the second principle reflects the benefit to the community from the tradition that develops in their customs as a legal standard, as long as the tradition does not contradict Shari'a.

As previously stated, there are three methods for implementing *maqâshid al-syarî'ah*: 1) Concentrating on the legal objectives (*maqâshid*) contained in the Qur'an and al-Sunnah instead of the text as the central axis of the law. In other words, preferring *mafhûm* (contextual) over *mantûq* (textual); 2) establishing *mashlahah* as a legal umbrella because Islamic law has no other purpose than to realize benefit *(jalb al-mashâlih)* and reject all forms of harm *(dar'u al-mafâsid)*, so it always bases legal sources on benefit-oriented *fiqh* principles primarily when no strong evidence from the Qur'an and Sunnah is found; and 3) Amending (cancelling) religious "dogmatic" provisions concerning public affairs found in the Qur'an and al-Sunnah in the form of *taqyîd, takhshîsh*, and *tabyîn bi al-'aql* (delimitation, restriction, and rational explanation). This will take place when a conflict arises between Quranic texts and sunnah with *mashlahah* in the field of *mu'âmalah* and not ibadah.

However, the three methods in the implementation of *maqâshid al-syarî'ah* in determining these fatwas are in accordance with the three criteria of benefit, namely: 1) the achievement of the objectives of sharia (*maqâshid al-syarî'ah*), which is realized in the form of maintaining the five primary needs *(al-dharûriyât al-khams)*: religion, soul, mind, property, and offspring, especially protecting property; 2) benefits that do not conflict with the textual text of the Qur'an and Sunnah and; 3) the right to determine the *mashlahah* and not something according to sharia which is an institution that has competence in the field of sharia and is carried out through *ijtihâd jamâ'i* (collective ijtihad). This matter includes fatwa institutions that exist in several Islamic countries, like the National Sharia Council-Majelis Ulama Indonesia (DSN-MUI).

As an analysis, all scholars and fatwa institutions have pursued the three methods for implementing *maqâshid* in response to the community's need for contemporary *mu'âmalah fiqh* and Islamic banking products that are within the cultural conditions and traditions that exist and develop in each country. As a result, differences in the outcomes of fatwas are ordinary and reasonable, according to a well-known *fiqh* principle: " *taghayyur al-ahkâm bi taghayyur al-azminah wa al-amkinah wa al-zhurûf* (changes in the law are caused by differences/changes in the times, places, and each own circumstances)."

CONCLUSION

Based on the study of several contract products in Islamic banks, as well as to assess the implementation of *maqâshid al-syarî'ah* as reflected in the scholars' fatwas, the findings of this study are based on a review of the literature and an analysis of the fatwas of scholars regarding contracts in several Islamic banking products. This research has found that Fatwas differ between Middle Eastern and Southeast Asian (Indonesian and Malaysian) scholars on the following three (three) Islamic banking contracts: a) In terms of the issue of determining a deposit contract, in the Middle East, a *qardh* (debt-based) contract is stipulated as a deposit contract in non-investment

accounts (demand and savings), whereas a *wadî'ah* (trust) contract is stipulated in Southeast Asia. There is, however, no disagreement on the fatwa concerning the stipulation of *mudhârabah* contracts in investment accounts (demand and deposits); b) concerning *murâbahah* contracts in Islamic banks, some Middle Eastern scholars, such as Saudi Arabia, forbid them, while Southeast Asian scholars (in Indonesia and Malaysia) and some other Middle Eastern scholars allow them though there are minor differences in *murâbahah* contract practice in some of these countries; c) concerning the issue of *al-Ijârah al-muntahiyyah bi al-tamlîk* (IMBT); most Middle Eastern scholars forbid it, but Southeast Asian (Indonesian and Malaysian) scholars allow it though the practice of IMBT differs slightly in Indonesia and Malaysia. The implementation of *maqâshid al-syarî'ah* as reflected in differences of opinion in fatwas of scholars in Muslim countries, especially the Middle East and Southeast Asia (Indonesia and Malaysia), has been implemented correctly and adequately in contracts in Islamic banking products in a Muslim country.

REFERENCES

Abdillah, M. Y., Rabi, M. E., & Firli, R. N. (2020). Tawarruq Application in Islamic Banking: A Comparative Study between Malaysia and Indonesia. *AL-ARBAH: Journal of Islamic Finance and Banking*, *2*(1), Article 1. https://doi.org/10.21580/al-arbah.2020.2.1.5540

Absori, Azhari, A. F., Basri, M. M., & Muin, F. (2016). Transformation of Maqâshid Al-Syarî'ah (an Overview of the Development of Islamic Law in Indonesia). *AL-IHKAM: Jurnal Hukum & Pranata Sosial*, *11*(1), Article 1. https://doi.org/10.19105/al-lhkam.v11i1.854

Adinugraha, H. H., Tamamudin, T., Abidin, R., Firdaus, M. I., & Syakirunni'am, L. (2023). Analysis of the Implementation of the DSN-MUI Fatwa and Maqashid Sharia in Sharia Hotels: A Study at the Lor In Sharia Solo Hotel. *Journal of Islamic Economics (JoIE)*, *3*(2), Article 2. https://doi.org/10.21154/joie.v3i2.7072

Agustin, D. N., & Hakim, L. (2022). Peran Religiusitas Sebagai Variabel Moderating Pengetahuan, Persepsi Produk Bank Syariah dan Literasi Keuangan Tehadap Minat Investasi Syariah. *Jurnal Pendidikan Akuntansi (JPAK)*, *10*(2), Article 2. https://doi.org/10.26740/jpak.v10n2.p106-116

Ahmad, A. U. F., & Hassan, M. K. (2007). Regulation and performance of Islamic banking in Bangladesh. *Thunderbird International Business Review*, *49*(2), 251–277. https://doi.org/10.1002/tie.20142

Aibak, K. (2023). Implementation of Maqāṣid Sharī'ah in Reform of Case Management of Violence against Women and Children. *De Jure: Jurnal Hukum Dan Syar'iah*, *15*(1), 82–98. https://doi.org/10.18860/j-fsh.v15i1.20666

al-Imrani, A. bin M. bin A. (2010). *Al-Uqûd al-Mâliyyah al-Murakkabah:Dirâsah Fiqhiyyah Ta'shîliyyah wa Tathbîqiyyah*. Dâr Kunûz Isybiliyâ.

al-Raysuni, A. (1981). *Nazhariyat al-Maqashid 'Inda al-Imam al-Syathibi*. al-Dar al-'Alamiyah li al-Kitab al-Islami wa al-Ma'had al-'Alami al-Fikr al-Islami.

Aldizar, A., & Agustina, V. (2022). Analysis of the Influence of Asset Quality, Liquidity, and Capital on Profitability. *International Journal of Economics, Business and Accounting Research (IJEBAR)*, *6*(2), Article 2. https://doi.org/10.29040/ijebar.v6i2.3029

Ali, M. M., & Hassan, R. (2020). Survey on Sharīʿah non-compliant events in Islamic banks in the practice of tawarruq financing in Malaysia. *ISRA International Journal of Islamic Finance*, *12*(2), 151–169. https://doi.org/10.1108/IJIF-07-2018-0075

Amareen, E. M. A., & Al-Husban, M. M. (2024). A critical overview of Islamic Performance Bonds. *Legality: Jurnal Ilmiah Hukum*, 32(1), 51–70. https://doi.org/10.22219/ljih.v32i1.29964

Anggraini, I. K. (2020). Maqasid Al-Shariah Values on Managing Assets in the Indonesian Muslim Merchant Association (ismi) East Java Perspective. *Al Qalam*, *37*(2), 21–42. https://doi.org/10.32678/alqalam.v37i2.3621

Aprianto, N. E. K., & Nazilah, I. R. (2023). Analysis of the Concept of Tawarruq in the Perspective of Sharia Economic Law. *El-Uqud: Jurnal Kajian Hukum Ekonomi Syariah*, *1*(1), 47–59. https://doi.org/10.24090/eluqud.v1i1.7718

Arfan, A. (2013a). *99 Kaidah Fiqh Muamalah Kulliyah: Tipologi Dan Penerapannya Dalam Ekonomi Islam Dan Perbankan Syariah*. UIN-Maliki Press. http://repository.uin-malang.ac.id/1145/

Arfan, A. (2013b). Maslahah Dan Batasan-Batasannya Menurut Al-Bûthî (analisis Kitab Dlawâbith Al-Mashlahah Fi Al-Syarî'ah Al-Islâmiyyah). *De Jure: Jurnal Hukum Dan Syar'iah*, *5*(1), Article 1. https://doi.org/10.18860/j-fsh.v5i1.2999

Arfan, A. (2015). Lima Prinsip Istinbat Kontemporer sebagai Konklusi Pembaharuan dalam Teori Penetapan Hukum Islam. *Al-Manahij: Jurnal Kajian Hukum Islam*, *9*(2), 223–236. https://doi.org/10.24090/mnh.v9i2.492

Arfan, A. (2017). Tipologi Multiakad Dalam Produk Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia Perspektif Teori Dan Batasan Multiakad Al 'Imrani. *ULUL ALBAB Jurnal Studi Islam*, *18*(2), Article 2. https://doi.org/10.18860/ua.v18i2.4787

Arfan, A. (2021). *Integrasi sains dan Islam dalam usul fikih klasik & fikih muamalah kontemporer: Analisis kitab al-Mustashfâ dan fatwa-fatwa ulama kontemporer* (I. A. Arfan, Ed.). UIN Maliki Press. http://repository.uin-malang.ac.id/9085/

Arfan, A., & Arfan, I. A. (2021). A strategy for strengthening public perception toward sharia banking. *Banks and Bank Systems*, *16*(2), 170–181. https://doi.org/10.21511/bbs.16(2).2021.16

Asa'ari, A., Zufriani, Z., Arzam, A., & Witro, D. (2021). Urgensi Pemahaman Terhadap Maqashid Al-Syari'ah dan Perubahan Sosial dalam Istinbath Al-Ahkam. *De Jure: Jurnal*

Hukum Dan Syar'iah, *13*(2), 222–239. https://doi.org/10.18860/j-fsh.v13i2.13818

Ascarya. (2007). *Akad & produk bank syariah*. RajaGrafindo Persada.

Auda, J. (2008). *Maqasid Al-shariah as Philosophy of Islamic Law: A Systems Approach*. International Institute of Islamic Thought (IIIT).

Audria, N. M., & Adinugraha, H. H. (2021). Implementation of Murabahah Contracts in Buying and Selling Housing. *Kunuz: Journal of Islamic Banking and Finance*, *1*(2). https://ejournal.iain-manado.ac.id/index.php/kunuz/article/view/65

Azmi, M. (2020). Implementasi Fatwa MUI Tentang Hukum Menggunakan Atribut Non-Muslim Perspektif Pekerja Publik di Kota Malang. *De Jure: Jurnal Hukum Dan Syar'iah*, *12*(2), Article 2. https://doi.org/10.18860/j-fsh.v12i2.15695

Chapra, M. U. (2016). *The Future of Economics: An Islamic Perspective*. Kube Publishing Ltd.

Chaudhry, N. I., Roomi, M. A., & Dar, S. (2020). Barriers to financial product innovation in Islamic banks in Pakistan: An interpretive structural modeling approach. *Journal of Islamic Accounting and Business Research*, *11*(2), 346–360. https://doi.org/10.1108/JIABR-05-2017-0063

Dasuki, M. A. (n.d.). *Hasiyah al-Dasûqi 'alâ al-Syarh al-Kabîr* (Vol. 3). Dâr Ihyâ al-Kutub al-'Arabiyyah.

Dinc, Y. (2020). Product development in Islamic finance and banking in secular economies. *Journal of Islamic Accounting and Business Research*, *11*(9), 1665–1676. https://doi.org/10.1108/JIABR-06-2019-0106

Fariana, A., & Sufiarina, S. (2019). Justice (al Mashlahah) for the Economic Dimension. *Istinbath*, *18*(2), Article 2. https://istinbath.or.id/index.php/ijhi/article/view/168

Fatriani, R. (2018). Bentuk-Bentuk Produk Bank Konvensional Dan Bank Syariah Di Indonesia. *Ensiklopedia of Journal*, *1*(1), Article 1. https://doi.org/10.33559/eoj.v1i1.55

Fauzan, H., & Imawan, D. H. (2023). Pemikiran Maqashid Syariah Al-Tahir Ibn Asyur. *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)*, *5*(1), Article 1. https://doi.org/10.20885/mawarid.vol5.iss1.art7

Gani, I. M., & Bahari, Z. (2021). Islamic banking's contribution to the Malaysian real economy. *ISRA International Journal of Islamic Finance*, *13*(1), 6–25. https://doi.org/10.1108/IJIF-01-2019-0004

Hadi, A. (2020). Various Models Of Islamic Economic Fatwa: Critical Analysis Of The Islamic Economic Facing Statement Model In Indonesia, Malaysia, Middle East: *Indonesian Journal of Law and Economics Review*, *7*, 10.21070/ijler.2020.V7.462-10.21070/ijler.2020.V7.462. https://doi.org/10.21070/ijler.2020.V7.462

Hamid, A. (2017). Aplikasi Teori Mashlahah (maslahat) Najm Al-Dîn Al-Thûfî Dalam Penyelesaian Sengketa Perjanjian Bisnis Di Bank Syariah. *Al-'Adalah*, *12*(2), Article 2. https://doi.org/10.24042/adalah.v12i2.210

Hanapi, A., Imanuddin, & Hasballah, K. (2022). Kedudukan Metode al-Qāfah Dalam Penetapan Nasab Anak Menurut Ulama Perspektif Maqashid al-Syariah. *De Jure: Jurnal Hukum Dan Syar'iah*, *14*(1), 21–37. https://doi.org/10.18860/j-fsh.v14i1.15875

Haron, R., & Mohamed Barre, G. (2023). Application of tawarruq in Islamic banking institutions in Somalia. *Qualitative Research in Financial Markets*, *15*(5), 888–906. https://doi.org/10.1108/QRFM-02-2022-0028

Herliana. (2023). Maqasid al-Sharia in Court-Mediation Reform: A Study on Efficiency and Social Justice in Medical Disputes. *De Jure: Jurnal Hukum Dan Syar'iah*, *15*(2), 214–229. https://doi.org/10.18860/j-fsh.v15i2.23962

Hidayat, N., & Jafar, W. A. (2021). Ijtihad From Friends Of The Prophet Muhammad In Making Justice Law. *International Journal of Educational Research and Social Sciences (IJERSC)*, *2*(1), Article 1. https://doi.org/10.51601/ijersc.v2i1.9

Hilali, S. al-D. M. (2010). *Al-Tsalâtsûnât fî al-Qadhâyâ al-Fiqhiyyah al-Mu'âshirah*. Maktabah Wahbah.

Ibrahim, N., & Mohd Sapian, S. (2022). Does Tawarruq still remain the top option for Islamic home financing (IHF) products in Malaysia? *Qualitative Research in Financial Markets*, *15*(1), 160–189. https://doi.org/10.1108/QRFM-07-2021-0118

Irawan, I., Jayusman, J., & Hermanto, A. (2020). Fatwa Contribution to the Development of Islamic Law (Study of The Fatwa Institute of Saudi Arabia). *FITRAH: Jurnal Kajian Ilmu-Ilmu Keislaman*, *5*(2), Article 2. https://doi.org/10.24952/fitrah.v5i2.1979

Izmuddin, I., Amalia, E., Nasir, M. A., & Muttaqin, F. (2023). *The Legitimation of Religion in Profit Seeking: The Role of National Shari'āh Division of The Indonesian Muslim Council (DSN-MUI)*. https://repository.uinjkt.ac.id/dspace/handle/123456789/71361

Jalili, I., Ulfa, F., & Sahid, M. M. (2023). Nahdlatul Ulama's Ijtihad Method in Fatwa: Analysis of The Content of Legal Decisions and Their Validity in Indonesia. *Justicia Islamica*, *20*(2), 341–360. https://doi.org/10.21154/justicia.v20i2.5971

Johari, J., Maghfirah, M., Maulidizen, A., & Rizapoor, H. (2023). Istiḥsān Method and Its Relevance to Islamic Law Reform: Content Analysis of Fatwa of Majelis Ulama Indonesia on Corneal Transplant. *De Jure: Jurnal Hukum Dan Syar'iah*, *15*(1), Article 1. https://doi.org/10.18860/j-fsh.v15i1.18442

Juniyantika, V. D. (2023). Pelaksanaan prinsip Bagi Hasil Dalam Akad Pembiayaan Perbankan Syariah. *Journal of Sharia Economics Scholar (JoSES)*, *1*(1), Article 1. https://ojs.unimal.ac.id/joses/article/view/5843

Khan, M. K. U., & Bakar, O. (2022). RELIGIOUS AUTHORITY, IFTĀ' CULTURE, AND SECTARIANISM IN MODERN PAKISTAN: THE IMPACT OF ITS INTRA-ISLAMIC PLURALISM. *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)*, *27*(1), Article 1.

Kholish, I., Purwanto, M., Supriadi, Mukharrom, T., & Marazi, H. (2020). *The Significance of Maqasid Syariah Principles in Improving Islamic Economics and Finance*. *13*, 2020.

Kitamura, H. (2022). The historical contingency of religious normativity: Local practices in Malaysian Islamic banking. *HAU: Journal of Ethnographic Theory*, *12*(2), Article 2. https://doi.org/10.1086/720511

Krippendorff, K. (1994). *Analisis isi pengantar teori dan metodologi* (Jakarta). PT Raja Grafindo Persada.

Kudaedah, N. A. (2020). Maslahah Menurut Konsep Al-Ghazali. *DIKTUM: Jurnal Syariah dan Hukum*, *18*(1), Article 1. https://doi.org/10.35905/diktum.v18i1.663

Kusnan, Osman, M. D. H. bin, & Khalilurrahman. (2022). Maqashid Al Shariah in Economic Development: Theoretical Review of Muhammad Umer Chapra's Thoughts. *Millah: Journal of Religious Studies*, 583–612. https://doi.org/10.20885/millah.vol21.iss2.art10

M. Anwar, S., Junaidi, J., Salju, S., Wicaksono, R., & Mispiyanti, M. (2020). Islamic bank contribution to Indonesian economic growth. *International Journal of Islamic and Middle Eastern Finance and Management*, *13*(3), 519–532. https://doi.org/10.1108/IMEFM-02-2018-0071

Ma`rufi, A. (2019). Maqâṣid Asy-Syarî'ah dalam Pemikiran Ibnu Taîmiyah (661 H / 1263 M - 728 H / 1328 M). *Syariati: Jurnal Studi Al-Qur'an Dan Hukum*, *5*(01), Article 01. https://doi.org/10.32699/syariati.v5i01.1185

Mahmudah, S. N., Ghozali, M. L., & Ritonga, I. (2022). Implementation of Sharia Maqashid on Sukuk Based on Fatwa Dsn-Mui/Ix/2020. *Jurnal Ilmiah Islam Futura*, *22*(2), Article 2. https://doi.org/10.22373/jiif.v22i2.12296

Mansoori, M. T. (2023). Fatwa in Islamic Legal Tradition and Its Implications for Shariah Pronouncements of Islamic Banks. In *Shariah Governance in Islamic Banking Institutions*. Routledge.

Mansour, W., Ajmi, H., & Saci, K. (2022). Regulatory policies in the global Islamic banking sector in the outbreak of COVID-19 pandemic. *Journal of Banking Regulation*, *23*(3), 265–287. https://doi.org/10.1057/s41261-021-00147-3

Matsum, H. (2023). Fatwas of the Indonesian Ulama Council (MUI) on National Strategic Issues 2006-2018 in the Perspective of Maqashid al-Syariah. *Al-Ulum*, *23*(1), Article 1. https://doi.org/10.30603/au.v23i1.3646

Mohamad, N., & Ab Rahman, A. (2014). Tawarruq application in Islamic banking: A review of the literature. *International Journal of Islamic and Middle Eastern Finance*

and Management, *7*(4), 485–501. https://doi.org/10.1108/IMEFM-10-2013-0106

Moqsith, A. (2005). *Merancang Kaidah (Ushul) Fikih Alternatif*. Paramadina Jakarta. https://repository.uinjkt.ac.id/dspace/handle/123456789/35819

Nastiti, N. D., & Kasri, R. A. (2019). The role of banking regulation in the development of Islamic banking financing in Indonesia. *International Journal of Islamic and Middle Eastern Finance and Management*, *12*(5), 643–662. https://doi.org/10.1108/IMEFM-10-2018-0365

Parsa, M. (2022). Efficiency and stability of Islamic vs. conventional banking models: A meta frontier analysis. *Journal of Sustainable Finance & Investment*, *12*(3), 849–869. https://doi.org/10.1080/20430795.2020.1803665

Qasim, M., Nadeem, M., & Ibrahim, S. (2023). Social Changes, Importance and Need of Ijtihad: An Analytical Study. *Journal of Social Sciences Review*, *3*(1), Article 1. https://doi.org/10.54183/jssr.v3i1.343

Rahman, M. H., & Ismail, R. N. A. B. R. (2023). Profit Maximization versus Price Ceiling from Maqasid al-Shari'ah Perspective: A Wasatiyyah Approach. *The Journal of Management Theory and Practice (JMTP)*, *4*(1), Article 1. https://doi.org/10.37231/jmtp.2023.4.1.255

Rizvi, S. A. R., Narayan, P. K., Sakti, A., & Syarifuddin, F. (2020). Role of Islamic banks in Indonesian banking industry: An empirical exploration. *Pacific-Basin Finance Journal*, *62*, 101117. https://doi.org/10.1016/j.pacfin.2019.02.002

Rohman, F. (2017). Maqasid Al-Syari'ah Dalam Perspektif Al-Syatibi. *Isti`dal : Jurnal Studi Hukum Islam*, *4*(2), Article 2. https://doi.org/10.34001/istidal.v4i2.833

Rostan, P., Alamĩ, S., Mohammad, E., Rahmanĩ, A., & Azĩzĩ, S. (2021). Challenges of Islamic Banking in Least Developed Countries: The Case of Afghanistan. *JOEEP: Journal of Emerging Economies and Policy*, *6*(Özel Sayı), Article Özel Sayı.

Rozi, F., Hamidah, T., & Arfan, A. (2022). Konsep Maqasid Syariâ€™ah Perspektif Pemikiran Al-Juwaini Dan Al-Ghazali. *IQTISODINA*, *5*(1), Article 1.

Saeed, S. M., Abdeljawad, I., Hassan, M. K., & Rashid, M. (2023). Dependency of Islamic bank rates on conventional rates in a dual banking system: A trade-off between religious and economic fundamentals. *International Review of Economics & Finance*, *86*, 1003–1021. https://doi.org/10.1016/j.iref.2021.09.013

Salisu, A., & Saniff, S. M. (2023). A Systematic Literature Review on the Relationship between Sharia Regulatory Framework and Islamic Fatwa. *REVENUE: Jurnal Manajemen Bisnis Islam*, *4*(1), Article 1. https://doi.org/10.24042/revenue.v4i1.16027

Suhendar, H., Mukhlas, O. S., & Hakim, A. A. (2023). Legal Politics of the Existence of Fatwa in Islamic Financial Institutions: Evidence from Indonesia. *Jurnal Hukum Islam*, *21*(2), Article 2. https://doi.org/10.28918/jhi_v21i2_03

Sulihkhodin, M. A. (2021). Maqashid Syariah Perspektif Izzudin Abdi Salam. *El-Faqih : Jurnal Pemikiran Dan Hukum Islam*, *7*(1), Article 1. https://doi.org/10.29062/faqih.v7i1.197

Syihab, M. B. (2023). Telaah Kritis Pemikiran Jasser Auda dalam Buku "Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach". *AN NUR: Jurnal Studi Islam*, *15*(1), Article 1. https://doi.org/10.37252/annur.v15i1.455

Syuhadak, F. (2013). Urgensi Fatwa Dalam Perkembangan Hukum Islam. *De Jure: Jurnal Hukum Dan Syar'iah*, *5*(2), Article 2. https://doi.org/10.18860/j-fsh.v5i2.3010

Tarmizi, T. (2020). The Concept of Maslahah According to Imam Al-Ghazali. *Jurnal Al-Dustur*, *3*(1), Article 1. https://doi.org/10.30863/jad.v3i1.642

Taufik, M., Muhammad, R., & Nugraheni, P. (2023). Determinants and consequences of maqashid sharia performance: Evidence from Islamic banks in Indonesia and Malaysia. *Journal of Islamic Accounting and Business Research*, *14*(8), 1426–1450. https://doi.org/10.1108/JIABR-07-2021-0205

Tohari, C., Fawwaz, H., & Swadjaja, I. (2022). The Ijtihad Construction Of Islamic Law Based On The Maqâshid Al-Syarî'Ah Approach In The Indonesian Context. *Prophetic Law Review*, *4*(2), Article 2. https://doi.org/10.20885/PLR.vol4.iss2.art4

Umar, M. H. (2007). *Nalar fiqih kontemporer* (Jakarta). Gaung Persada.

Yakar, E. E. (2021). *Islamic Law and Society: The Practice Of Iftā' And Religious Institutions*. Routledge.

Yakar, S., & Yakar, E. E. (2021). The Approach of the Fiqh Council of North America towards Identity Problems of Contemporary Muslim Minorities. *Method & Theory in the Study of Religion*, *34*(1–2), 44–63. https://doi.org/10.1163/15700682-bja10072

Yasin, N. (2021). Implementasi Kebijakan Pemenuhan Hak Beragama Penyandang Disabilitas oleh Negara Perspektif Maqashid Syariah. *De Jure: Jurnal Hukum Dan Syar'iah*, *13*(2), Article 2. https://doi.org/10.18860/j-fsh.v13i2.14462

Yusdani. (2000). *Peranan kepentingan umum dalam reaktualisasi hukum: Kajian konsep hukum Islam Najamuddin At-Tufi*. UII Press.

Yuspin, W., Wardiono, K., Budiono, A., & Gulyamov, S. (2022). The law alteration on artificial intelligence in reducing Islamic bank's profit and loss sharing risk. *Legality: Jurnal Ilmiah Hukum*, 30(2), 267–282. https://doi.org/10.22219/ljih.v30i2.23051

Zubair, H. (2023). *Islamic Banking and Finance: Second edition*. Taylor & Francis.