



THE AUTHORITATIVENESS OF FATWA: A Study of Sharia Banks' Compliance With The DSN-MUI Fatwa on Fund-Raising

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Abstract: This article investigates the background of Bank SS Syariah Jatituwo Branch Office's decision to launch the *Protab* program, which conflicts with Fatwa No. 86/DSN-MUI/XII/2012 of the Indonesian Ulema Council (DSN-MUI) concerning Gifts in Fundraising for Islamic Financial Institutions. The decision in the case of Bank SS Syariah Jatituwo raises questions about the DSN-MUI Fatwa's binding power over Islamic financial institutions in Indonesia. The information in this research gathered from the leaders and officials of Bank SS Syariah Jatituwo was analyzed using the theory of fatwa in Islamic legal thought and the role of the DSN-MUI Fatwa in the Indonesian national legal system. This study concludes that the position of a non-binding fatwa is correct according to Islamic law. This, however, violates the direction of positive law in Indonesia, which in principle gives the DSN-MUI Fatwa binding power and requires Bank Indonesia to transform the material for the DSN-MUI Fatwa, which contains sharia principles regarding sharia economy and finance, into material content of statutory regulations. have legal and binding force. Because these requirements have not been made the standard in laws and regulations and have only been appointed in concept, the Director of Bank SS Syariah Jatituwo uses loopholes to disagree with fatwas and laws.

Keywords: Authoritativeness of Fatwa; National Sharia Council; Indonesian Ulema Council

Abstrak: Artikel ini mengkaji latar belakang keputusan Bank SS Syariah Kantor Cabang Jatituwo untuk meluncurkan program *Protab* yang berselisih dengan Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI) No. 86/DSN-MUI/XII/2012 tentang Hadiah

dalam Penghimpunan Dana Lembaga Keuangan Syariah. Keputusan Bank SS Syariah Jatituwo tersebut menimbulkan pertanyaan tentang daya ikat Fatwa DSN-MUI pada Lembaga keuangan syariah di Indonesia. Penelitian ini mengumpulkan keterangan dari pimpinan dan pejabat Bank SS Syariah Jatituwo dan menganalisisnya dengan teori fatwa dalam pemikiran hukum Islam dan kedudukan Fatwa DSN-MUI dalam sistem hukum nasional Indonesia. Penelitian ini menyimpulkan bahwa kedudukan fatwa tidak mengikat adalah benar secara hukum Islam, namun menyalahi arahan hukum positif di Indonesia yang secara prinsip memberi daya ikat kepada Fatwa DSN-MUI dan mewajibkan Bank Indonesia untuk mentransformasikan materi Fatwa DSN-MUI yang berisi prinsip-prinsip syariah mengenai perekonomian dan keuangan syariah menjadi materi muatan peraturan perundang-undangan yang memiliki kekuatan hukum dan mengikat. Direktur Bank SS Syariah Jatituwo menggunakan celah untuk berselisih dengan fatwa maupun undang-undang karena ketentuan tersebut belum dijadikan sebagai norma dalam peraturan perundangan dan baru ditunjuk secara prinsip.

Kata Kunci: Daya ikat Fatwa; Dewan Syariah Nasional; Majelis Ulama Indonesia



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INTRODUCTION

The fatwa issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) is one of the most important regulations governing the conduct of Islamic banking in Indonesia.¹ The significance of the DSN-MUI fatwa resides in its position as an organic part of the organization and development of the Islamic economy and a measuring tool for its success in Indonesia. This existing Islamic economic fatwa is a model for the growth and regeneration of *muamalah maliyah fiqh* (economic jurisprudence) in Indonesia.² A fatwa issued by a person or an institution affects the person who requests the fatwa and a larger audience.³ Fatwa is a non-binding opinion issued by a *mufti*, whether *mujtahid* or *faqih*, in response to a case filed by a *mustafti* in *ushul al-fiqh*. The mufti's fatwa is not required to be obeyed by

¹ Aries Mufti dan Muhammad Syakir Sula, *Amanah Bagi Bangsa: Konsep Sistem Ekonomi Syariah* (Jakarta: Masyarakat Ekonomi Syariah, 2007), 221.

² Panji Adam, *Fatwa-fatwa Ekonomi Syariah* (Jakarta: Amzah, 2018), 205; Atik Abidah, "The Transformation of DSN-MUI Fatwa in The Unit-Linked Products: A Contemporary Analysis," *Justicia Islamica: Jurnal Kajian Hukum dan Sosial* 17, no. 2 (27 November 2020): 299-322, <https://doi.org/10.21154/justicia.v17i2.1960>.

³ Mohammad Syifa Amin Widigdo dan Homaidi Hamid, "The Power of Fatwa in Indonesia: An Analysis of MUI's Controversial Fatwas," *Afkaruna*, 14 No. 2 (December 2018):147, <https://doi.org/10.18196/AIJIS.2018.0085.146-165>.

the *mustafti* because a fatwa has no binding authority (*ghairu mulzimin*). Still, it is dependent on the *mustafti*'s calmness and confidence in the concerns he presents.⁴

The DSN-MUI fatwa has increasingly demonstrated its role as a guideline for the implementation of Sharia principles in Islamic banking in Indonesia since the enactment of Law Number 21 of 2008 Concerning Islamic Banking, which requires stakeholders to pay attention to and adapt business activities to the Sharia principles stated in the fatwas issued by the DSN-MUI.⁵ The objective of this law is to control Islamic banking activity because Islamic banks have their manner of advertising their products to the public. The banking industry frequently rewards potential customers to pique the public's interest in these items. The explicit goal is that people are interested in saving their money to the bank. The purpose is apparent, and that is that people want to save money in a bank.

In this regard, it's interesting to observe the practices of Bank SS Syariah in Jatituwo, which distributes gifts to customers who participate in the *Protab* (savings program). Participants in this program must deposit a specified amount of funds into savings or current accounts, which the bank subsequently blocks or holds for three months. This savings has a nominal value of at least IDR 25,000,000,-. Bank SS Syariah offers direct awards in cash (vouchers) to reward the customer's desire to save at *Protab*. The prize's size depends on the nominal savings amount and the time the funds remain blocked. The total prize money awarded is IDR 15,000,000,-. Bank SS Syariah also provides prizes in the form of goods or services. *Wadi'ah* and *mudārabah* contracts are employed and carried out with extra conditions for depositing the deposited money for a set period.⁶

The *Protab* product appears problematic because the DSN-MUI Fatwa No. 86/DSN-MUI/XII/2012 concerning Prizes in Fundraising for Islamic Financial Institutions prohibits Islamic Financial Institutions (LKS) from giving cash prizes to depositors and only allows gifts of goods and/or services.⁷ Thus, it is clear that there is a discrepancy between the *Protab* program and the DSN-MUI Fatwa, even though the existence of a fatwa is intended to be obeyed and guided so that LKS activities

⁴ Tika Mutiani and Muhamad Burhanuddin, "Kaidah Fiqh dalam Fatwa Ekonomi DSN-MUI" *Jurnal Ilmiah Ekonomi Islam*, 09 No. 01 (2023): 775, <http://dx.doi.org/10.29040/jiei.v9i1.7817>

⁵ Ahyar Ari Gayo and Ade Irawan Taufik, "Kedudukan Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia dalam Mendorong Perkembangan Bisnis Perbankan Syariah (Perspektif Hukum Perbankan Syariah)," *Jurnal Rechtsvinding*, 1 No. 2, (August, 2012), 268, <http://dx.doi.org/10.33331/rechtsvinding.v1i2.100>.

⁶ Director Bank SS Syariah, *Interview*, April 14 2020; Customer Service, *Interview*, April 14 2020.

⁷ DSN-MUI, *Himpunan Fatwa Keuangan Syariah* (Jakarta: Erlangga, 2014), 478.

follow sharia principles.⁸ Therefore, this study attempts to look at the decision of Bank SS Syariah to provide cash prizes to customers of *Protab* products with the perspective of fatwa theory as described in the literature on Islamic legal thought, especially *uṣūl al-fiqh* and the position of the DSN-MUI Fatwa in the system— Indonesian national law.

Several researchers have conducted research relevant to this topic, such as research by M. Ridwan Setiawan et al., conducted at Bank Muamalat KCP Parepare. According to this research, the Muamalat KCP Parepare Bank offers two savings programs with prizes. *First*, prime savings with prizes. Customers deposit funds in the amount the bank sets for a set time in this savings account. *Second*, in savings planning with prizes, in this savings, the customer deposits money at the beginning of a predetermined amount of money by saving each month for an amount determined by the bank. The greater the amount of money saved, the greater the prizes received.⁹

Another study, by Roni Hidayat and Muhammad Ismail Abdullah, intends to investigate the practice of offering presents (bonuses) to iB Hijrah deposits with a wadi'ah contract at the Bank Muamalat Indonesia Tegal Branch. According to the findings of this study, the provision of gifts (bonuses) in the wadi'ah contract at iB Hijrah Bank Muamalat Indonesia Tegal Branch complied with Islamic law because there was no agreement at the beginning in practice.¹⁰

Meanwhile, regarding the compliance of Islamic banks, there is research written by Agus Waluyo entitled *Kepatuhan Bank Syariah Terhadap Fatwa Dewan Syariah Nasional Pasca Transformasi Ke Dalam Hukum Positif* (Compliance of Islamic Banks with the Fatwa of the National Sharia Council After Transformation Into Positive Law). This study aims to examine the compliance commitment of Islamic Banks to implement the DSN fatwa, which has been transformed into positive law. According to the findings of this study, the commitment to implementing Sharia bank compliance with the DSN fatwa has not been effective or efficient. Sharia compliance has been carried out normatively by the director of compliance at all levels of Islamic banking, following compliance principles, compliance culture, risk

⁸ Dewan Syariah Nasional MUI, *Himpunan Fatwa Keuangan Syariah* (Jakarta: Erlangga, 2014).

⁹ M. Ridwan Setiawan, Rahmawati Rahmawati, and Wahidin Wahidin, "Implementasi Fatwa DSN-MUI No: 86/ DSN-MUI/ XII/ 2012 Tentang Hadiah Dalam Penghimpunan Dana," *Banco: Jurnal Manajemen dan Perbankan Syariah* 1, no. 1 (1 May 2019): 23–44, <https://doi.org/10.35905/banco.v1i1.693>.

¹⁰ Roni Hidayat and Muhammad Ismail Abdullah, "Tinjauan Hukum Islam Terhadap Pemberian Hadiah (Bonus) Dalam Akad Wadi'ah Di Tabungan iB Hijrah Bank Muamalat Indonesia Cabang Tegal," *Al Barakat - Jurnal Kajian Hukum Ekonomi syariah* 2, no. 01 (30 Mei 2022): 19–36, <https://doi.org/10.59270/jab.v2i01.103>.

management, and compliance code of ethics. The Sharia Supervisory Board's duty in the Sharia compliance monitoring system has been carried out, but not optimally.¹¹

Abdul Haris Simal wrote another study on the binding power of fatwas. Simal explained in this study that the Sharia Banking Act and other restrictions in its implementation present issues linked to Sharia compliance, particularly with the framework and fatwa authority holders. On the one hand, it is said that shari'ah banks' commercial activities, products, and services must adhere to shari'ah principles, precisely Islamic law principles based on the fatwa of the Indonesian Ulema Council (MUI). However, the DSN-MUI fatwa is required to be published in a Bank Indonesia Regulation (PBI) first. The findings of this study concluded that the Sharia Banking Committee incorporated the DSN-MUI fatwa into a regulation at the proposal of Bank Indonesia Regulation Number 10/32/PBI/2008 concerning the Sharia Banking Committee. This basis for Bank Indonesia regulations distinguishes the DSN-MUI fatwa from a non-binding fatwa that can become binding when incorporated into laws and regulations.¹²

Furthermore, Angga Syahputra and Reni Ria Armayani published a study titled "Conversion of DSN-MUI's Fatwa on Islamic Banking to National Law." The purpose of this article is to describe the DSN-MUI fatwa's perspective as the legal basis for establishing Islamic banking. Furthermore, this article discusses the role of fatwas issued by Islamic ulama in implementing Islamic banking in various Muslim countries. According to the findings of this study, the DSN-MUI fatwa's position in implementing Islamic banking is not yet operational. Because the DSN-MUI Fatwa must be converted into Bank Indonesia or Financial Services Authority regulations. In Muslim countries, the viewpoint of the ulema's fatwa is the main reference point for the implementation of Islamic banking. This is because the state prioritizes religious ulamas' fatwas over financial authority.¹³ Based on past research, this study differs from taking the research locus at Bank SS Syariah Jatituwo Branch Office. Overall, this study is unusual in its approach to delving deeper into how Islamic

¹¹ Agus Waluyo, "Kepatuhan Bank Syariah Terhadap Fatwa Dewan Syariah Nasional Pasca Transformasi Ke Dalam Hukum Positif," *Inferensi* 10, no. 2 (1 December 2016): 517, <https://doi.org/10.18326/infsl3.v10i2.517-538>.

¹² Abdul Haris Simal, "Relevansi Fatwa dalam Regulasi Perbankan Syariah sebagai Landasan Operasional Perbankan Syariah" *J-HES (Jurnal Hukum Ekonomi Syariah)*, 03 No. 02 (July-December 2019): 158-175, <https://doi.org/10.26618/j-hes.v3i2.2645>

¹³ Angga Syahputra and Reni Ria Armayani, "Conversion of DSN-MUI's Fatwa on Islamic Banking to be the National Law" *Jurisdictie: Jurnal Hukum dan Syariah* 11, No. 2 (2020): 262-285. <http://dx.doi.org/10.18860/j.v11i2.9068>

banks comply with fatwas regarding giving gifts when raising funds. As a result, this research is essential.

This is qualitative research using a non-statistical or non-mathematical approach.¹⁴ Data was gathered through documentation studies and interviews. Documentation studies clarify the norms to be enforced by gift regulations, particularly DSN-MUI Fatwa No. 86/DSN-MUI/XII/2012. Interviews with Bank SS Syariah Jatitwo stakeholders were undertaken to investigate decisions about awarding cash incentives to clients participating in *Protab* products. Furthermore, all facts were deductively examined utilizing normative juridical foundations pertinent to the problem formulation. As a result, the presentation of the research findings begins with a discussion of the place of fatwas (legal opinions from Muslim juries) in the Islamic legal system and the Indonesian national legal system. Furthermore, field data on rules for LKS in Indonesia regarding prizes, such as encouraging public interest in fundraising products, is offered.

THE CONCEPTION OF FATWA IN ISLAMIC LAW

Etymologically, fatwa comes from the Arabic language, namely *fatwā*, with the plural form *fatāwā*, which means advice, advice, answers to legal questions, opinions in law, or legal opinion.¹⁵ Meanwhile, terminologically, as stated by al-Shāṭibī, fatwa means an opinion about Sharia law that is not binding to be followed. According to Yusuf al-Qardāwī, a fatwa is a sharia legal explanation of an issue as an answer to a question posed by a fatwa requester (*mustaftī*), either individually or collectively.¹⁶ Fatwa is also viewed as an explanation of Sharia law in some instances as an answer from the person asking whether or not the questioner explains his identity.¹⁷ Parties requesting a fatwa can be individuals, institutions, or community groups. They are not required to follow the fatwa's contents because the fatwa is not binding even on the requester of the fatwa. This is true for *qada'an wa diyanatan*. The person who issues a fatwa regarding fiqh and *usūl al-fiqh* is known as a *muftī*, whereas the one who requests a fatwa is known as a *mustaftī*.¹⁸

¹⁴ Ibrahim, *Metodologi Penelitian Kualitatif* (Bandung: Alfabeta, 2015), 53; Soerjono Soekanto, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2001), 3.

¹⁵ Yeni Salma Barlinti, *Kedudukan Fatwa Dewan Syariah Nasional dalam Sistem Hukum Nasional di Indonesia Disertasi* (Jakarta: Universitas Indonesia, 2010), 63.

¹⁶ Ma'ruf Amin, *Fatwa Dalam Sistem Hukum Islam* (Jakarta: eLSAS, 2008), 19.

¹⁷ Adam, *Fatwa-fatwa*, 23.

¹⁸ Adam, *Fatwa-fatwa*, 23-24

In Islamic thought, a fatwa is interpreted as a response to an event (giving a firm response to all events that occur in society). According to some ulama, the fatwa is the straight path.¹⁹ Fatwas are prepared using the usual principles of digging up sharia law from its arguments (*ijtihad*). Therefore, a *mufti* (giver of fatwas) is also a *mujtahid* who devotes all his ability to finding law from recognized sources of Islamic law. Fatwas occupies an essential position in the Islamic legal system. When a new problem arises for which legal certainty is not yet available in both the Qur'an, Sunnah, and *Ijma'* as well as the opinions of previous *fuqahā'*, then the fatwa is a competent institution to provide an answer.²⁰ Fatwas, in addition to providing a temporary solution to *mustafti* fatwas concerns, also serves as a tool for responding to the emergence of modern issues.²¹

Fatwa and *fiqh* are complementary. *Fiqh* is a comprehensive compilation of Islamic law. *Fiqh* is a legal book (*rechtsboeken*) that guides Muslim behavior in everyday life. Because of the vastness of the topic of *fiqh*, not all of it is required by someone. Certain persons likely require a more extensive explanation of some matters in *fiqh*. For such purposes, one must consult the *mufti* (fatwa-giver) to obtain what is required. The fatwa serves to apply specific *fiqh* provisions that may require further explanation.²²

Fatwas are typically independent opinions that respond to ordinary legal matters posed by individuals or institutions. Fatwas are also codified in vast literature for scientific-academic reasons, particularly *fiqh*, and *usūl al-fiqh* ulama.²³ Fatwas are desperately needed by Muslims, who cannot independently extract law from its sources. They are fatwa consumers, primarily communities that desire to constantly adhere to religious responsibilities and prohibitions, mainly whether something is haram or halal. Fatwas, in addition to offering answers to the questions posed, serve as a tool for responding to existing or contemporary occurrences. Fatwas have played an essential role in clarifying Islamic law through tangible answers to cases society has faced.²⁴ A *mufti* (provider of fatwas) is a *mujtahid* tasked

¹⁹ Ansori, "Position of Fatwa in Islamic Law: The Effectiveness of MUI, NU, and Muhammadiyah Fatwas," *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan*, 22 No. 1 (2022): 57, <https://doi.org/10.18326/ijtihad.v22i1.53-72>.

²⁰ M. Erfan Riadi, "Kedudukan Fatwa Ditinjau dari Hukum Islam dan Hukum Positif (Analisis Yuridis Normatif)," *Ulumuddin*, 6 (January - June 2010), 472, <https://doi.org/10.22219/ulumuddin.v7i1.1305>.

²¹ Iiz Izmuddin, "Fatwa Methodology of National Sharia Board of Indonesian Ulama Council in Islamic Economics," *Miqot*, 42 no. 1 (January-June 2018): 46, <http://dx.doi.org/10.30821/miqot.v42i1.499>.

²² Ma'ruf Amin, et. al., *Fatwa Majelis Ulama Indonesia (MUI) Dalam Perspektif Hukum dan Perundang-undangan* (Jakarta: Puslitbang Kehidupan Keagamaan, 2011), 21.

²³ M. Erfan Riadi, "Kedudukan Fatwa", 471.

²⁴ Amin, *Fatwa Dalam Sistem*, 8.

with devoting all of his abilities to finding law from Islamic law sources. A fatwa given by a mufti is regarded as a *considered legal opinion*.²⁵

As a result, a fatwa establishes legal certainty for new topics whose legal status is unclear.²⁶ Fatwas are an alternative to breaking the ice in the development of Islamic law and a mechanism to respond to the demands of the times in the form of a clear and immediate response to new legal cases. The reason for the need for a fatwa, the same as the need for *ijtihād*, is that the number of religious texts is limited because they are no longer revealed or spoken. Still, problems and legal cases are increasing along with the times. In conditions like these, the fatwa has become an institution that has become a tradition among the Muslim community to eliminate legal uncertainty. This needs to be increased during the period after the end of the era of direct legal discovery from religious *naṣṣ-naṣṣ*,²⁷ namely the period when the problems that emerged were beyond the scope of the literal meaning of *naṣṣ (istidlālī)*, instead you have to use the *taḥlīlī* and *istiṣlāḥī* methods. Fatwas are indeed a response to legal events. However, the fatwa also acts as a source of legal development by enriching the legal material it decides on. Fatwa competence encompasses all aspects of Islamic law, including material decided in the past and topics entirely new in light of the demands of contemporary Muslim society. Fatwas, on the other hand, are non-binding, which means that the fatwa requester is not required to follow the fatwa issued at his request. Because it is usual for *ulama* to give several legal fatwas in the same instance, fatwa institutions in Muslim history have supplied such diverse laws.²⁸ From this point of view, fatwa institutions tend to operate better as a legal development movement rather than simply offering legal certainty to fatwa requesters. As a result, fatwas are frequently published as fatwa collection books, subsequently used as objects of study and discussion by jurists.

The fatwa was issued in response to a question from the *mustaftī*. *Mustaftī* is a person who does not have a complete or partial understanding of sharia law and must rely on others to know and act in a religious matter. Essentially, the individual requesting the fatwa is an ordinary person who knows nothing and cannot carry out *ijtihād*.²⁹ *Mustaftī* can be individuals, institutions, or community groups. *Mustaftī* are not obliged to follow the fatwas they receive. Fatwas for *mustaftī* are *ikhtiyārīyah*

²⁵ Riadi, "Kedudukan Fatwa," 472.

²⁶ Adam, *Fatwa-fatwa*, 25.

²⁷ Mardani, *Hukum Ekonomi Syariah di Indonesia* (Bandung: Refika Aditama, 2011), 215.

²⁸ Panji Adam, *Hukum Islam (Konsep, Filosofi dan Metodologi)* (Jakarta: SinarGrafika, 2019), 251.

²⁹ Adam, *Fatwa-fatwa*, 31.

(non-binding choice of law), whereas for parties other than *mustaftī*, they are *i'lāmīyah* or informative.³⁰ The content of the fatwa itself is not necessarily dynamic, but at least the fatwa is responsive.³¹ Fatwas are responsive, according to Ma'ruf Amin, because they are legal opinions provided in answer to queries or requests for fatwas (on demand). In general, fatwas provide answers to actual events or circumstances. A fatwa provider (*muftī*) may decline to grant a fatwa on issues about future events. Fatwas are not binding, so fatwas differ from court decisions (*qadā'*), which have binding legal force.³² Fatwa is not the same as positive law, binding on all citizens; fatwa can only be binding if it has been converted into statutory regulations.³³

The hierarchy of laws and regulations in Indonesia is regulated in Article 7 paragraph (1) of Law No. 12 of 2011 Concerning Legislation Formation in conjunction with Law No. 13 of 2022, which specifies that the categories and hierarchy of laws and regulations are as follows:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Laws/Government Regulations instead of laws;
4. Government Regulations;
5. Presidential Regulation;
6. Provincial Regulations; And
7. Regency/City Regional Regulations.³⁴

According to this law, the DSN-MUI fatwa is not a statutory regulation with comprehensive binding power³⁵ because the fatwa is not part of positive law.³⁶ As a result, a fatwa cannot be applied or enforced following legal requirements, such as binding on all Indonesians or being put into force. A new fatwa can be binding if

³⁰ Soleh Hasan Wahid, "Pola Transformasi Fatwa Ekonomi Syariah DSN-MUI Dalam Peraturan Perundang-undangan di Indonesia," *Ahkam*, 4 no. 2 (November, 2016), 182, <https://doi.org/10.21274/ahkam.2016.4.2.171-198>.

³¹ Dewan Redaksi Ensiklopedi Islam, "Fatwa," *Ensiklopedi Islam*, 2 (Jakarta: PT Ichtiar Baru van Hoeve, 2001), 6.

³² Barlinti, *Kedudukan Fatwa*, 66.

³³ Nunung Nurlaela et al., "Reviewing The Fatwas Related to Fintech Applications in Islamic Financial Institution in Indonesia," *Jurnal Ekonomi dan Keuangan Islam*, 9 no. 2 (2020): 207, <http://dx.doi.org/10.22373/share.v9i2.7989>.

³⁴ Amin, et al., *Fatwa Majelis*, 5.

³⁵ Ahyar Ari Gayo dan Ade Irawan Taufik, "Kedudukan Fatwa Dewan Syariah Nasional," 265, <http://dx.doi.org/10.33331/rechtsvinding.v1i2.100>.

³⁶ Umarwan Sutopo, "Dialektika Fatwa dan Hukum Positif di Indonesia: Meneguhkan Urgensi dan Posisi Fatwa di Masyarakat Muslim Nusantara," *Justicia Islamica*, 15 no. 1 (June, 2018), 100, DOI: 10.21154/justicia.v15i1.1435.

transformed into statutory regulations. The transformation of the fatwa is in the form of a change in form, from the product of "diverse" *fuqahā'* reasoning (*mukhtalaf fiḥ*) to a product of "similarity" state administrative bodies (*muttafaq 'alayh*), namely laws and regulations (*al-qā nūn*). These changes in form are followed in various ways by changes in substance, so it can be said to be structural changes in the context of the structure and culture of the nation's society due to the existence of constant determinant factors for changes in human life as a whole. This transformation means a process of contextualizing fiqh norms (as *majmū'āt al-aḥkām*) into the structure of the nation's society. In this process, there is reduction, adaptation, and modification of *fiqh* norms which were previously "anti-structural" in nature, to become "structured" positive law, which has binding and regulatory power. Sometimes, *fiqh* is transformed into a positive law with coercive power. Thus, when a fatwa is transformed into positive law, it has undergone a change in form and function in the context of the national legal system.³⁷ MUI, through DSN, has created Sharia law norms in financial institution operations. Several fatwas issued by the MUI aided in this process. The Sharia Supervisory Board, through the MUI fatwa, also plays a vital role in settling Sharia business issues at both macro and micro Sharia institutions.³⁸

Bank Indonesia Regulations and the law affirm the DSN-MUI fatwa, which states that each new product from an Islamic bank must first receive clearance from the DSN-MUI fatwa. As a result, the contents of this advising and non-binding fatwa have become a binding provision that all Islamic financial institution actors must follow.³⁹ Evidence of the increasing position of the DSN-MUI is the emergence of provisions in various laws and regulations as follows:

- a. Law Number 40 of 2007 Concerning Limited Liability Companies in Article 109 states:
 - (1) Companies that carry out business activities based on Sharia principles and have a Board of Commissioners must have a Sharia Supervisory Board.
 - (2) As referred to in paragraph (1), the Sharia Supervisory Board consists of one or more Sharia experts the GMS appoints on the recommendation of the Indonesian Ulema Council.

³⁷ Tuti Hasanah, "Transformasi Fatwa Dewan Syariah Nasional ke Dalam Hukum Positif," *Syariah: Jurnal Hukum dan Pemikiran*, 16 no. 2 (December, 2016), 166, <http://dx.doi.org/10.18592/sy.v16i2.1022>.

³⁸ Imam Mustofa, "Analisis Penggunaan Kaidah *Al-hujjah Qad Tunazzalu Manzilah al-Darurah* dalam Fatwa Dewan Syariah Majelis Ulama Indonesia," *Analisis: Jurnal Studi Keislaman*, 18 no. 2 (2018): 3, <https://doi.org/10.24042/ajsk.v18i2.3425>.

³⁹ Barlinti, *Kedudukan Fatwa*, 448.

- (3) The Sharia Supervisory Board, as referred to in paragraph (1), has the task of providing advice and suggestions to the Board of Directors and supervising the Company's activities so that they comply with Sharia principles.
- b. Article 25 of Law Number 19 of 2008 Concerning State Sharia Securities (SBSN) states:

"In the context of issuing SBSN, the Minister requests a fatwa or statement of conformity of SBSN with sharia principles from an institution that has the authority to issue fatwas in the sharia field." In the explanation of Article 25, it is stated that: "What is meant by "an institution that has the authority to issue fatwas in the field of sharia" is the Indonesian Ulema Council or other institutions appointed by the government."⁴⁰

The restrictions make conformity with the specified Sharia standards coercive, and any infringement can result in an administrative penalty. Similarly, the Sharia Supervisory Board (DPS) is required to oversee the activities of Islamic financial institutions by referring to fatwas issued by the DSN-MUI.⁴¹

The binding strength of the DSN-MUI Fatwa, produced when it was employed as regulatory material in a Bank Indonesia Regulation, is required as a guide for Islamic banking in the design and development of new products and Islamic banking operational operations in general. The DSN-MUI fatwa also obligates the Sharia Supervisory Board of Islamic banking institutions to follow the DSN-MUI fatwa. Formulating a fatwa is a demand that the DSN-MUI must meet to create legal certainty for implementing Sharia economic activities in Indonesia by closing the legal vacuum.⁴² UU No. 21 of 2008 on Islamic Banking gives technical instructions on following Sharia principles to develop the banking sector and the obligation to apply the DSN-MUI fatwa. The law also establishes more precise and explicit guidelines for Islamic banking systems and regulations.⁴³

THE CONCEPT OF GIFTS IN FUNDRAISING IN SHARIA FINANCIAL INSTITUTIONS

On April 12, 2011, the management of Bank SS Syariah established a sub-branch office in Jatituwo after receiving approval from Bank Indonesia (BI). Since its

⁴⁰ Taufik, "Kedudukan Fatwa, 267.

⁴¹ Gayo dan Ade Irawan Taufik, "Kedudukan Fatwa, 268, <http://dx.doi.org/10.33331/rechtsvinding.v1i2.100>.

⁴² Ibid.

⁴³ Abdurrohman Kasdi, "Contribution of National Sharia Council Fatwa of Indonesian Council of Ulama (DSN-MUI) in the Islamic Economic Development in Indonesia," *Iqtishadia*, 11 No. 1 (2018): 60, <http://dx.doi.org/10.21043/iqtishadia.v11i1.3187>.

beginning, Bank SS Syariah Jatituwo has aimed to maintain the ideal of balancing commercial and spiritual principles. Bank SS Syariah Jatituwo developed as a bank capable of combining the two, such that harmonizing commercial principles and spiritual values is one of Bank SS Syariah's advantages in Indonesian banking. *Protab* is one of the several products launched by Bank SS Syari'ah Jatituwo. This program offers cash rewards to customers who deposit a certain amount within a certain period. Gifts (*hadiyyah*) are presented sincerely as a symbol of respect and appreciation. Gifts can also foster positive relationships between those who give and receive gifts. Islam praises good ties and affection among members of society to obtain happiness in this life and the hereafter. Gifts are objects offered to others out of genuine admiration and respect.⁴⁴ Gifts can foster affection and harmony between the giver and the recipient. Thus, in a financial institution's relationship with a customer, a gift is a non-binding gesture that (yet) seeks to gain customer loyalty.⁴⁵

Giving such gifts is both familiar and unproblematic. When LKS declare their submission to authority and that authority imposes precise regulations governing their behavior, problems arise. In this case, the DSN-MUI's authority guarantees that incentives in LKS DPK (Third Party Funds) deposits may be granted if not already agreed upon. DSN-MUI Fatwa Numbers 01/DSN-MUI/IV/2000 concerning Current Accounts and Number 02/DSN-MUI/IV/2000 Concerning Savings state that no remuneration is necessary, except in the form of presents (*'atāya*),⁴⁶ which are given voluntarily by the bank. Gifts should not become ordinary (custom, *'urf*) or lead to hidden usury practices. Furthermore, the National Sharia Council Fatwa No. 86/DSN-MUI/XII/2012 states that financial gifts are prohibited.

THE PERCEPTION OF SS SYARIAH JATITUWO BANK DIRECTOR ABOUT THE POSITION OF DSN-MUI FATWA

Bank SS Syariah Jatituwo has developed a fundraising scheme called *Protab*, which includes direct prizes for depositing a particular amount of money within a specific time restriction. Customers of Bank SS Syariah Jatituwo have been informed that if they save a minimum of IDR 25,000,000 and deposit/block the monies for one year, they will receive one suitcase from the bank. The Director of Bank SS Syariah Jatituwo has approved and signed this program. In the face of fierce competition among banks, the Director of Bank SS Syariah Jatituwo confesses that awarding cash

⁴⁴ Tim Penyusun, *Kompilasi Hukum Ekonomi Syariah* (Jakarta: Kencana, 2017), 206.

⁴⁵ DSN-MUI, *Himpunan Fatwa Keuangan Syariah*, 477.

⁴⁶ DSN-MUI, *Himpunan Fatwa Keuangan Syariah*, 480.

rewards is a strategy to attract customers to save their funds in the bank. On the other hand, gifts are a statement of appreciation and thanks from the bank to its customers who have saved. This award is determined by customer criteria rather than a random drawing.⁴⁷ Bank SS Syariah Jatituwo awards prizes after the contract has been authorized by both sides, namely the bank and the customer. This program applies to current accounts, deposits, and savings, regardless of whether a *mudārabah* or *wadī'ah* contract is used. In this regard, there is a conflict between the bank's practices and Fatwa No. 86/DSN-MUI/XII/2012, which states that in the case of a fund deposit arrangement with a *wadī'ah* contract, the LKS awards a promotional incentive before the *wadī'ah* contract happens. However, in practice, prizes are given after the *wadī'ah* contract has taken place, and these prizes are listed in brochures and used as a marketing strategy.

The Director of Bank SS Jatituwo acknowledged the position of the DSN-MUI Fatwa as the basis for carrying out all Islamic bank business activities and is very important for maintaining Islamic financial institutions so that they run according to sharia principles in his explanation regarding the dispute with the DSN-MUI Fatwa. However, he highlighted that the fatwa is not a binding rule for legal actors in Islamic tradition.⁴⁸ According to him, DSN-MUI Fatwa No. 86/DSN-MUI/XII/2012 does resolve several misunderstandings concerning gift giving. In this case, however, he is more concerned with demonstrating that the fatwa is not legally binding. He believes that the reward product launched by the bank he leads is neither a type of *rishwah* nor a lottery that contains *gharar* (deception) or *maysir* (gambling) and hence is not prohibited by Islamic law. Customers must deposit a certain amount of money within a specific time frame to participate in this promotion. The presence of the DSN Fatwa institution demonstrates the consequences of the conditionality and flexibility components of the Qur'an verses in Islamic economics.⁴⁹

The Bank SS Syariah Jatituwo leadership explained why they are introducing *Protab* with prizes. According to him, there is a great demand in the industry for Islamic banks to draw public funding and compete with conventional banks. Sharia banks must also contend with the misconception held by joint depositors that

⁴⁷ Abdurrahman, Head of Bank SS Syariah Jatituwo, *Interview*, April 14 2020.

⁴⁸ Customer Service Bank SS Syariah Jatituwo, *Interview*, April 14 2020.

⁴⁹ Ahmad Hasan Ridwan dan Asep Rahmat, "Dimensi Kondisionalitas dan Fleksibilitas Al-Qur'an bagi Implementasi Fatwa DSN-MUI tentang Produk Bank Syariah," *Asy-Syari'ah*, 22 no. 1 (June 2020): 64, <https://doi.org/10.15575/as.v22i1.8467>.

Islamic banks are primarily for observant Muslim communities. At the same time, Muslims are often better suited to dealing with traditional banks.⁵⁰ That is why the SS Syari'ah Bank Jatituwo Branch continues to provide cash rewards while violating the DSN-MUI Fatwa. Customers like to be able to purchase appropriate gifts on their own, and the bank gives the funds. Gift products may not be appropriate for their needs. Giving money awards as an incentive to save money with a bank is quite prevalent in the banking business. Abdurrahman acknowledged that this action violated the DSN-MUI Fatwa, but the fatwa is not legally binding. Law No. 12 of 2011 on the development of laws and regulations excludes fatwas from the hierarchy of laws and regulations. As a result, the fatwa cannot be used as obligatory regulations that can be implemented. Furthermore, not all economic fatwas are commercially applicable. Certainly, LKS will not make a less profitable product that third parties cannot absorb."⁵¹

THE BINDING POWER OF DSN-MUI FATWA IN THE PRACTICE OF SHARIA FINANCIAL INSTITUTIONS

Islamic banking sector actors object to the Fatwa of the National Sharia Council No. 86/DSN-MUI/XII/2012. The leadership of Bank SS Syariah Jatituwo views this fatwa as weakening the competitiveness of LKS in the midst of intensifying competition in the banking world. The leadership stated that the *Protab* Program was not problematic because it did not contain fraud or gambling. On the pretext that fatwas are not binding and that monetary gifts are perceived as strengthening the competitiveness of Islamic banks, the leadership of Bank SS Syari'ah Jatituwo chose to disagree with the DSN-MUI Fatwa, which prohibits gifts in the form of money.

Thus, the perception of the Director of Bank SS Syariah Jatituwo that the position of a non-binding fatwa is correct because a fatwa independently does not have coercive or binding power. However, the decision that violates the Fatwa of the National Sharia Council No. 86/DSN-MUI/XII/2012 is a decision that violates laws and regulations. Based on the applicable laws and regulations, particularly Law No. 21 of 2008 on Islamic Banking, Bank Indonesia (BI), as the regulator, is required to convert the DSN-MUI Fatwa materials into laws and regulations with

⁵⁰ Ahmad Hasan Ridwan and Asep Rahmat, "Dimensi Kondisionalitas dan Fleksibilitas Al-Qur'an bagi Implementasi Fatwa DSN-MUI tentang Produk Bank Syariah," *Asy-Syariah* 22 no. 1 (2020) <https://doi.org/10.15575/as.v22i1.8467>

⁵¹ Ahmad Hasan Ridwan and Asep Rahmat, "Dimensi Kondisionalitas dan Fleksibilitas Al-Qur'an bagi Implementasi Fatwa DSN-MUI tentang Produk Bank Syariah."

legal power and general binding. The goal is to improve the DSN-MUI Fatwa's standing as a binding regulation for Islamic financial institutions in Indonesia. The legal aspect of the operational DSN-MUI fatwa is its incorporation into various laws and regulations governing the functioning of Islamic financial institutions. This is evident from the fatwas that have been made into laws. The DSN-MUI fatwa's legal force is binding in the operations of Islamic financial institutions. This can be seen in KMA/032/SK/IV/2006 concerning the Application of Book II Guidelines for implementing Court Duties and Administration. The DSN-MUI fatwa is one of the material laws in settling cases, especially in the Religious Courts/Sharia Court. Bank Indonesia must also use the DSN-MUI Fatwa as reference material in creating external Bank Indonesia Regulations (PBI) and Circular Letters. Making Islamic banking-related PBIs may only refer to DSN-MUI fatwas, not fatwas from other institutions.⁵² The majority of the DSN-MUI fatwas were adopted as binding laws and regulations by Bank Indonesia (BI) or the Ministry of Finance of the Republic of Indonesia, precisely the Directorate General of Financial Institutions, the Directorate General of Debt Management, and the Capital Market and Financial Institution Supervisory Agency (Bapepam LK).

When this paper was finalized, Islamic banks in Indonesia were being merged, and finally, a new Islamic bank emerged as a result of the merger named Bank Syari'ah Indonesia (BSI). It turns out that programs like *Protab* have continued to the present day⁵³ after being stopped by Bank SS Syari'ah Jatituwo before joining BSI. Please note that the termination was not based on legal considerations but for realistic reasons, namely, lack of interest. The difference is that at the time of Bank SS, the contract used was a *wadī' ah* contract, whereas after being implemented by BSI, the contract used is *mud{a<rabah*. Other provisions, such as depositing funds within a certain period, remain the same. This continuity underscores the existence of a "conflict" between fatwa rules (laws) and the demands of the business world in a "dim area," which opens up debate. Because fatwas also have the nature of *ijtihādī*, a new fatwa that is more acceptable to all groups or compromises with reality's demands is not impossible. This does not reduce the credibility of fatwas but instead opens opportunities for legal developments in the field of shari'ah finance and for the performance of fatwas that are always up to date. It also appears that BSI's move, which is a "state-owned bank," shows the "authenticity" of the business world's

⁵² Ahyar Ari Gayo dan Ade Irawan Taufik, "Kedudukan Fatwa Dewan Syariah", 268, <http://dx.doi.org/10.33331/rechtsvinding.v1i2.100>.

⁵³ Azizah, Customer Service Bank SS Jatituwo, *Interview*, October 19 2022.

signal to the DSN-MUI fatwa. Transformation of fatwas into laws and regulations as intended by Law No. 21 of 2008 concerning Islamic Banking seems to open a gap for "bargaining" from the point of view that the transformation is still in toto or principle only. DSN-MUI Fatwa No. 86/DSN-MUI/XII/2012 has not been expressly and fully made into a regulation in the mandate of any articles and paragraphs of laws and regulations, so its binding power to business people is still an issue.

The DSN-MUI fatwa's existence is critical in directing Islamic banking to conform to Sharia principles and maintain operational compliance with Islamic teachings. This fatwa gives explicit principles for Islamic financial institutions, particularly Islamic banks, to match their business operations with Islamic law. Adherence to the DSN-MUI fatwa indicates how closely Islamic banks adhere to Sharia law principles and guidelines in their operations.

This prohibition can be interpreted as an attempt to avoid hidden usury aspects and promote fairness in Sharia commercial dealings. Prohibiting financial gifts can also help to avoid lousy intent from consumers who may be just interested in gifts and not the principles of halal and blessed business in Islamic finance. These studies provide greater detail about how Islamic bank compliance with the DSN-MUI fatwa affects implementing banking processes and granting gifts. According to this report, there are still obstacles to regularly and successfully implementing the DSN-MUI fatwa in Islamic banks. This demonstrates the significance of Islamic bank supervision and compliance with DSN-MUI fatwas to ensure operational compliance with Sharia principles.

CONCLUSION

The perception of the leadership of Bank SS Syariah Jatituwo that the Fatwa DSN No. 86/DSN-MUI/XII/2012 non-binding is correct, following the essential nature of fatwa in Islamic tradition. This perception, however, can be called into doubt by positive law or actual legislation. This is because various regulations, particularly Law No. 21 of 2008 on Islamic Banking, require the regulator, namely Bank Indonesia, to transform DSN-MUI fatwa materials into laws and regulations that have legal force and are generally binding. This demonstrates that the DSN-MUI Fatwa's perspective is binding for Indonesian Islamic financial institutions. The majority of DSN-MUI fatwas adopted by Bank Indonesia (BI) or the Ministry of Finance of the Republic of Indonesia, particularly the Directorates General of Financial Institutions, Debt Management, and the Capital Market and Financial Institution Supervisory Agency (Bapepam LK), become statutory regulations.

However, as long as it has not substantively become an article and paragraph of any statutory regulation, incorporating the DSN-MUI Fatwa No. 86/DSN-MUI/XII/2012 into legislation is incomplete. As a result, the fatwa's binding power is still not optimal, in the sense that "negotiations" made by the Sharia business sector may not entirely comply with the fatwa's restrictions. The continuation of the reward program initiated by Bank SS Syariah by promising and offering cash awards rather than goods or services without any sanctions, which is prohibited by No. 86/DSN-MUI/XII/2012, is evidence of this.

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