



6th ICLJ - Abstract Acceptance Announcement

2 pesan

ICLJ 6 <iclj6@easychair.org>

Sab, 23 Jul 2022 pukul 19.28

Kepada: Tri Hidayati <trihidayati55@gmail.com>

Dear Tri Hidayati and Muhammad Syarif Hidayatullah,

Greetings from the 6th ICLJ Secretariat!

a. Acceptance of Abstract and Submission of Paper

Congratulations! We are delighted to inform you that your proposed abstract has been accepted for the 6th International Conference on Law and Justice held on 28-30 August 2022 at Sheraton Hotel, Lombok, West Nusa Tenggara.

b. Conference Attendance

The Conference will be held in hybrid, with some speakers and participants attending it virtually. Please indicate your offline or online attendance by filling out the following form: <https://forms.gle/gEUy7vUt95vYaz3b8>.

c. Guidelines for Paper Submission

Please submit your original conference paper by 18 August 2022 – make sure you respect this deadline. Kindly follow the submission specifications for preparing your paper for the Conference:

- The paper should be written in English, Arabic, or Indonesian, depending on the journal you targeted;
- If English is not your native language, please have your papers read by a native English speaker or seek online services of proofreading to improve the language of your papers;
- References should be provided by using citation applications such as Mendeley or Zotero;
- The paper template is available at: <https://docs.google.com/document/d/105FYIplAjtZh3aThv2nuY7clE52nXg1N/edit?usp=sharing&ouid=116057611587632449585&rtpof=true&sd=true>

d. Guidelines for Paper Presentation at the Parallel Sessions

Here are some guidelines for the paper presented at the Conference:

- The language of presentation is English, Arabic, Malay and Indonesian.
- Each paper is allocated a maximum of 15 minutes for presentation. There will be only one presenter for each paper.
- A Questions and Answers session will follow at the end of each panel.
- The time limit will be strictly enforced to facilitate the smooth running of the Conference.
- Speakers who wish to use PowerPoint slides to present their papers should send their slides to the ICLJ committee's email: iclj@uinjkt.ac.id.

e. Papers at the Conference

We urged that you adhere to the paper submission deadline. As part of ICLJ's effort to go green and reduce paper usage, the conference papers will only be made available in soft files. Please note that there will not be any printed hard copies of individual papers distributed at the Conference.

f. Publication

Authors have options to publish their manuscripts in the journals published by the ICLJ's publication partners:

- i. Scopus Indexed Journals: Ahkam, Samarah, Al Ihkam, Ulumuna and Juris.
- ii. Sinta 2 Indexed Journals: Al-Iqtishad, Cita Hukum, Share, 'Adalah, De Jure, Ijtihad, Juridictie, Al Manahij, Fasya and Madania.

- The review of the papers will involve the journals' editors in selecting the potential papers to be published in the respective journals;
- Please note that the paper publication will depend on the quality of your paper and the review result of the journals' editors;
- The publishers have full authority to accept or reject the papers;
- All publication costs will be charged to the authors.

g. Letter of Invitation

Should you require a formal letter of invitation to assist you in securing conference leave and funding from your respective institutions/countries, please contact our secretariat;

h. Registration and Payment of Conference Fee

Presenter
Professional: USD 170
Student: 120 (applies for under-graduate students with proof of Student ID)

Participant
Professional: USD 120
Student: USD 50 (applies for under-graduate students with proof of Student ID)

Please note that for co-authored papers where all presenters will be attending, all will need to register and pay the registration fee. Each paper will only have one presenter. Other authors will act as participants and enjoy conference facilities, including receiving a certificate as a presenter. The cost does not include transportation and accommodation facilities.

Please proceed to register for the Conference and transfer payment into the following Bank account:

Virtual Account Number : 9886083100000004
Account Holder : Fakultas Syariah dan Hukum
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Message : ICLJ6-2022
Please confirm and upload proof of payment in your account

The closing date for registration is 20 September 2019. If we do not receive your registration and payment by then, we would assume that you wish to withdraw your participation. Do note that the organizers do not provide funding nor subsidies to conference participants and speakers.

i. Accommodation and Transportation

Please note that the organizers will not be responsible for accommodation and transportation costs and arrangements made by the conference delegates.

j. Contact

For conference inquiries, please feel free to contact the ICLJ Secretariat:

Indra Rahmatullah: 081284951026;

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We look forward to meeting you in Lombok!

Yours sincerely,
Windy Triana, PhD
On behalf of the 6th ICLJ Secretariat

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[Kutipan teks disembunyikan]

PROGRESSIVE ISLAMIC BUSINESS LAW IN THE DIGITAL ERA: EPISTEMOLOGICAL STUDY OF FATWA DSN MUI

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Abstrak: Era digital telah merambah dengan pesat pada produk dan transaksi di lembaga keuangan syariah sehingga memerlukan kejelasan status hukumnya. DSN-MUI bertugas untuk melakukan *istimbath* hukum untuk menentukan hukum melalui proses epistemologis. Penelitian ini bertujuan untuk menelaah potret progresifitas DSN MUI terhadap paradigma keuangan digital, dan aspek epistemologi hukum Islam dalam Fatwa DSN MUI yang bertema digital. Penelitian ini menggunakan pendekatan kualitatif. Data primer penelitian ini adalah fatwa-fatwa DSN MUI hingga tahun 2021 yang bertema digital, ditambah data sekunder berupa literatur yang relevan. Analisis data menggunakan teknik content analysis. Hasilnya yaitu ada tiga fatwa DSN MUI mengenai keuangan digital pada lembaga keuangan Syariah, yaitu Fatwa Nomor: 116/DSN-MUI/IX/2017, 117/DSN-MUI/II/2018, dan 140/DSN-MUI/VIII/2021. Ketiga fatwa ini merupakan hukum bisnis Islam progresif. DSN MUI merespon dengan cepat permohonan lembaga keuangan syariah (fatwa pertama dan kedua), dan fatwa yang ketiga merupakan hasil inisiatif DSN MUI yang berhubungan erat dengan fatwa kedua mengenai kegiatan keuangan syariah yang berbasis IT. Ketiga fatwa itu menunjukkan bahwa DSN MUI menggunakan metode ta’lil dan istislahi dengan pertimbangan bahwa uang elektronik, pembiayaan dan crowd funding yang berbasis digital adalah boleh (*mubah*) berdasarkan prinsip-prinsip syariah untuk mencapai *kemaslahatan*.

Kata Kunci: Era Digital; Hukum Bisnis Islam; DSN MUI; Hukum Islam Progresif

Abstract: The digital era has rapidly penetrated products and transactions in Islamic financial institutions, so it requires clarity of Islamic legal status. DSN-MUI is tasked with carrying out legal *istimbath* to determine the law through an epistemological process. This study examines the portrait of the DSN MUI's progress toward the digital finance paradigm; and the epistemological aspects of Islamic law in the digital-themed DSN MUI Fatwa. This study uses a qualitative approach. The primary data for this research is the DSN MUI fatwas until 2021 with a digital theme, plus secondary data in the form of relevant literature. Data analysis using content analysis technique. The result is that there are three DSN MUI fatwas regarding digital finance in Islamic financial institutions, namely Fatwa Number: 116/DSN-MUI/IX/2017, 117/DSN-MUI/II/2018, and 140/DSN-MUI/VIII/2021. These three fatwas are progressive Islamic business laws. DSN MUI responded quickly to requests from Islamic financial institutions (first and second fatwas), and the third fatwa was the result of the DSN MUI initiative which was closely related to the second fatwa regarding IT-based Islamic finance activities. The three fatwas show that the MUI DSN uses the *ta'lili* and *istislahi* method, considering that digital-based electronic money, financing, and crowdfunding are permissible (*mubah*) based on sharia principles to achieve benefit (*mashlahat*).

Keywords: Digital Age; Islamic Business Law; DSN MUI; Progressive Islamic Law

Introduction

The digital era that has existed since the 1980s is a manifestation of changes in modern human civilization that demands time, cost, and energy efficiency in various aspects of life, along with the development and advancement of information and communication technology (Nurfalah & Rusydiana, 2019). In this case, the economic and corporate sectors are heavily involved in the digital era through the internet as their primary tool.

From an economic and business perspective, digitalization can be both an opportunity and a challenge. Bank Indonesia took advantage of this opportunity by contributing to the development of the digital economy as a source of new economic growth and planning three main payment system strategies in the era of the digital economy. Namely, set the Vision of the Indonesian Payment System 2025, encourage the growth of electronic payment transactions, and promote the MSME Online Marketing Readiness Program (to involve MSMEs) in the digital economy. From a business perspective, digitization is key to improving customer relationships and business processes and creating and adapting new business models. A large number of internet users have reacted to this opportunity, especially Indonesia has been ranked 4th in the world by the end of 2021, and the internet penetration rate in Indonesia reached 69.8% in 2020 and is estimated to reach 82.53% in 2026 (Prambadi, 2021).

As part of the economic sector, which is the circle of money circulation in the country, Islamic banking must develop according to market needs. To achieve these goals and objectives, Islamic banks will continue to innovate according to their needs and make it easier for customers to carry out various transactions between banks and other digital-based parties (digital banking). Digital banking developed so far includes ATM, internet, mobile, video, phone, and SMS banking. Several banks have also introduced branchless banking services, especially for the unbanked population (Dz, 2018).

In addition to the Islamic banking industry, the rapid development of technology has also changed people's lifestyles, especially in meeting their financial needs. It impacts the emergence of new businesses in technology-based financial services, often known as financial technology (fintech) companies. Fintech is a result of a combination of financial services and technology, which ultimately changes the conventional

business model to a moderate one; from the beginning, customers wanted to make transactions they had to be face-to-face. Now, they can be done remotely by making payments.

The digital era also affects the trend of using electronic money, which is now rife in society, ranging from card-based electronic money to server-based electronic money. According to Bank Indonesia, the value of e-money transactions will reach IDR 31.3 trillion in November 2021 (Media, 2021). It is inseparable from the trend of customers using e-banking services, as seen in the increased electronic transactions among banking customers in Indonesia.

All the descriptions of the revolution above are aspects of muamalah that are relatively new (contemporary) in the field of Islamic law and, of course, become a challenge in the formation and renewal of Islamic law in Indonesia. In this case, determining what is good and evil requires a philosophical approach using epistemological reasoning to conform to Islamic business principles. One of the epistemological foundations of the construction of Islamic law is a benefit (Sarifudin, 2019). Because the purpose of Islamic law is to benefit human life, Islamic law must be able to follow developments and changes in society and understand contemporary issues (Sarifudin, 2019). According to Abdullah Saeed, the ability to respond quickly to contemporary issues in Islamic law is progressive *ijtihad* (Gafur, 2019; Maulana & Rozak, 2021).

Several countries, including Malaysia and Indonesia, have carried out progressive *ijtihad* towards the digital era in Islamic business law. The Sharia Advisory Council of Bank Negara Malaysia (MPS-BNM) has issued guidelines for "E-Money as a Shariah Compliant Instrument" in 2020 by the provisions of Article 28 (1) and (2), Deed of Service of Islamic Finance 2013 (Ramli et al., 2021; Susilawati et al., 2021). Meanwhile, international-scale fatwa institutions such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) have not issued fatwas or sharia standards related to electronic money (AAOIFI, 2017).

As for Indonesia, the DSN MUI has issued fatwas relating to electronic money, information, and technology-based payment transactions. Under the establishment of the DSN-MUI, namely realizing the aspirations of Muslims regarding economic issues and encouraging the application of Islamic teachings in the economic/finance sector according to the guidance of Islamic law. To promote the application of Islamic law

in economic and financial life, DSN-MUI must be proactive in responding to dynamic and rapid developments in the economic and financial sector (DSN-MUI – National Sharia Council – Indonesian Ulema Council, n.d.).

This study explores the content of DSN MUI's fatwa regarding the digital finance paradigm and the epistemological aspects of Islamic law in the digital-themed DSN MUI Fatwa. This study uses a qualitative approach. The primary data are the fatwas of the MUI DSN until 2021 with a digital theme, plus secondary data in the form of books and journals on the methodology of legal findings in Islamic law, sharia economic law, and the digital era. Data analysis using content analysis techniques on the contents of the fatwas of DSN MUI with the theme of digital business. This content analysis method uses the Harold D Lasswell model through three stages: first, describing the content of the message in the form of existing thoughts from the character being studied, namely the legal provisions in the DSN MUI fatwa with the theme of the digital era. Second, checking the background in the form of values, attitudes, motives, and problems so that the DSN MUI makes fatwas related to digital-based Islamic business. Third, examine the impact or implications of message content on the development of Islamic business law in Indonesia (Janowitz, 1968). After conducting the analysis, the authors make conclusions from the research results.

The Digital Age and the Flexibility of Islamic Law

Social change is necessary, along with the development and complexity of the needs of human life. Islam is recognized as a universal religion (QS. Al Ahzāb: 40, Saba': 28, and Al Anbiyā': 107), flexible, and dynamic, which is identified through its legal products, both Sharia and *fiqhiyyah* in answering all the problems of human life. According to Ash Shiddieqy, Islamic law has the characteristics of takaful (whole), wasathiyah (balanced, harmonious), and harakah (dynamic), which are always present based on maqashid al sharia as its philosophy by paying attention to the principles of Islamic law contained therein (Shiddieqy, 2001). Interpreting Islamic law sources must update Islamic law, considering the needs, current circumstances, and situations as a paradigm (Izomiddin, 2018). Islamic Sharia, which is always consistent with its principles, will be able to respond to the development and progress of the times, especially in this digital era.

Soekanto argues that community change can occur without being attempted, desired, or planned by humans (unintended change/unplanned change) or through human efforts (planned change) as agents of change (Soekanto, 1986). Internal and external factors influence social change. Internal factors include changes in population, discoveries, and internal societal conflicts, while external factors include natural disasters and seasonal changes (Soekanto, 1986). Chaeruman concludes that three factors drive social change: population, environment, and technology (Khaeruman, 2010).

Social changes that include politics, economy, and culture can affect the form and evolution of law. The object of law is an act of human behavior that naturally will continue to change according to the culture and knowledge surrounding it. For this reason, the law will also change from time to time. Dynamic changes in the law indicate that the law is living (living law), so according to its context, it provides solutions and answers to all social problems for which the law is unclear (Maulidi, 2015). In the Science of *Ushul Fiqh*, there is even an adage that becomes the rule for changing the law. Ibn Qayyim al Jauziyyah, in his book *I'lâm al-Muwaqqi'în* discusses the issue of changing this law by mentioning the limitations of *ushul*, which read (al Jauziyyah, 1968): "Changes and differences in fatwas according to changes in times, places, circumstances, intentions, and customs. habit". Al Jaizânî, in his book *Ma'âlim Ushl al-Fiqh 'Ind Ahl as-Sunnah wa al-Jamâ'ah*, also mentions almost the same rules, but there are slight differences by not including "customs," but which is the last factor is "wisdom" (al Jaizânî, 1427). This rule has become a philosophical, juridical, and sociological basis for mujtahids to find new laws and fill legal voids by constructing Islamic law through a series of agreed legal *istimbath* methods.

The purpose of combining classical and contemporary Islamic law methodologies in the field of Mazab theory is to respond to social changes, including the impact of the digital era on business and the Islamic financial system. The classical Ulama methodology focuses on the literal interpretation of the Qur'an and al-Sunnah. In contrast, the newer (modern) methods are offered mainly by liberal religious groups (according to Hallaq, two groups provide new ways, namely, Religious Utilitarianism and Liberalism religious). Contemporary Islamic legal methodology emphasizes aspects of the dialectical relationship between revealed texts (*nash*) and the reality of the modern world (*al waqi`*). The relationship

between the revealed texts and the reality of the contemporary world is established through the interpretation of the soul and the universal messages contained in the text, not their literal interpretation. *Nash* and *Al waqi'* are two areas that will lead to a comprehensive understanding if we can combine them. According to al- Shaṭībī, there are three styles of reading textual texts, namely *qira'ah salafiyyah*, *qira'ah ta'wiliyyah*, and *qira'ah maqashidiyyah*. As for the area of *al-waqi'*, to understand social phenomena, politics, etc., use several disciplines—sociology and anthropology. The scientific method is good enough to be the study commander in this area. Therefore, reading texts and the subsequent contextualization of social phenomena should not leave the scientific field with all the tools of the scientific method that exist in the realm of *al-waqi'*. Otherwise, the understanding of the text will be out of date, so it is not applicable (Mahsun, 2015).

In the context of developing methodological thinking toward 'modern scientific *ijtihad*' (the term used by Qodri Azizi), combine the two methodologies. The modern scientific *ijtihad* uses the *eclectic manhaji* or *manhaji plus scientific* method, as the implementation of *al-muḥafazah 'ala 'l-qadim al-ṣaliḥ wa' l-akhdh bi 'l-jadid al-aṣlah* (Azizi, 2003; Fauzi M, 2018). In its implementation, the combination of the two methods must meet the main prerequisites, namely making *al-mashlahah 'ammah* (general propriety) or *maqasid al-Shariah* as a determining consideration in exploring a law in its three main domains, namely *dharuriyyah* (urgent needs), *hajiyyah* (regular needs), and *taḥsiniyyah* (complementary needs) (Mahsun, 2015).

The methodological approach as a science field is insufficient to characterize the legal status of social phenomena. It requires an approach to other scientific areas that can integrate comprehensively. Regarding digital culture in business and economic activities, an epistemological aspect of Islamic economics is needed, which is currently influenced by three schools: the Bakir Sadr (*iqtishaduna*) school, the mainstream school, and the alternative-critical school. This Islamic economic epistemology uses deductive and inductive methods. An axiological point of view can study the difference between economics and *fiqh mu'amalat*. Economics aims to help humans meet their needs (Arwani, 2017).

The construction of Islamic law, both classical and contemporary, is generally carried out in a way that is divided into three patterns, namely:

(1) *Bayani* pattern (semantic study); (2) *Ta'lili* pattern (determination of 'illat or legal factors); (3) The *istislahi* pattern (consideration of the benefit or interests of the community). The *Bayani* pattern focuses more on language studies (semantics) in the form of grammatical interpretation, such as when a word means intrinsic or *majazi* (actually or figuratively). It is to know how to choose one of the meanings of the word *musytarak* (which contains several meanings), and determine and choose verses that are *qath'i* (definite) and which verses are *zanni* (uncertain) and so on, which are discussed in the science of *ushul fiqh* in detail. The *ta'lili* pattern is a pattern that focuses more on the study of determining 'illat (determination of legal factors that become legal anchors). Procedurally, it discusses ways to assess 'illat, conditions for 'illat, the use of 'illat in *qiyas*, and found a new 'illat in legal changes. The *istislahi* pattern focuses more on the consideration of benefit, which means studies relating to new problems that are not in the Qur'an and the Sunnah of the prophet, which usually arise due to advances in science and technology. The application of the three patterns is carried out in stages and collaboratively. If the *bayani* pattern is deemed insufficient to reach the legal objectives, use the *ta'lili* pattern. Likewise, the *istislahi* pattern will be used if the *bayani* and *ta'lili* patterns are used and considered not to meet the legal objectives (Nafis, 2011).

Progressivity of DSN MUI towards Digital Finance Paradigm

The current dynamic development of the times makes us unable to deny the existence of technological advances that lead to the digital era. Digitization uses digital technology to create new business models and provide opportunities that generate value. Digitalization of the financial system and technology is an innovation of the digital financial system so that people can easily access financial products and services and weaken the barrier to entry (Nurfalah & Rusydiana, 2019). Digitalization requires all to move dynamically due to global competition with the competitiveness of financial products and services. Business people carry out various efforts to pamper consumers, users, or customers by making online business transaction innovations in the form of e-commerce and e-payment applications with payment instruments in the form of card-based or server-based e-money.

According to data compiled by iPrice, 50 e-commerce companies have been operating in Indonesia since 2018. Until the third quarter of

2021, it is reduced to 39 e-commerce companies. There are ten e-commerce companies including in the third quarter of 2021. They won in business competition based on average website visits from first place, namely Tokopedia, Shopee, Bukalapak, Lazada, Blibli, Orami, Ralali, Bhinneka, JD ID., and Zalora. (*List of 50 E-Commerce Websites & Applications in Indonesia 2019*, nd). These data show that digital money and platforms for digital business and financial institutions have grown massively and will continue to grow more advanced.

These various innovative digital-based services are not impossible to create new problems for the parties involved in the electronic transaction, namely the principal (issuer and/or acquirer: bank and non-bank), issuer (bank or non-bank), acquirer (responsible for payments), holders, traders, clearing operators, and transaction final settlement operators. The issue in question concerns the validity of the law and the clarity of the responsibilities of each party. That is because Islamic law emphasizes the halal aspect and the limits of benefit and harm. According to the Decree of the MUI National Sharia Council, Number 02 of 2000 concerning the Basic Guidelines for the DSN MUI Number 01 of 2000 on the duties and authorities of DSN MUI, the authority to provide legal clarity is the duty of the DSN MUI as the only institution mandated by law to stipulate fatwas on Islamic economics and finance for the public and Islamic Financial Institutions as the legal basis for operations. DSN MUI Fatwa for Islamic financial institutions has four functions. *First*, as operational guidelines and products of Islamic financial institutions. *Second*, as a basis and reference for product development. *Third*, as a guideline for conforming to operational Sharia and sharia financial institution products. *Fourth*, as a basic guideline for DPS to oversee sharia compliance in supervised Islamic financial institutions (Faozan, 2016, p. 315). The DSN MUI fatwa is sought to minimize differences in sharia interpretations which can result in differences in the legal determination of a case (Nafis, 2011). Without a fatwa and *ijtihad*, Islamic law will seem static (Pelu & Tarantang, 2020). The era, with all its forms of *muamalah* develops dynamically with the emergence of new cases and problems that demand an answer and legal solution. Hence, the presence of the DSN MUI fatwa is very urgent in responding to this.

Fatwa occupies an essential position in Islamic law because fatwas are opinions expressed by *fuqaha* about the legal standing of a new problem in society. When new issues arise without strict legal provisions,

both in the Qur'an, As-Sunnah, and ijma' and the opinions of previous fuqaha, the fatwa is one of the normative institutions authorized to answer or determine the legal position (Witro et al. al., 2021). In a legal opinion, the DSN MUI fatwa is an essential part of the development of sharia economics. Islamic values contained in sharia norms are confirmed in the fatwa. In terms of sharia economics, the fatwa itself is determined by scholars who are considered to have qualified scientific authority in *fiqh* muamalah maliyah and Islamic economics. In principle, the fatwa is not binding because fatwas are legal opinions. However, the DSN MUI fatwa has critical power when it is established as the basis for verifying compliance with sharia norms by law to create a sharia financial ecosystem (Fakhrunnas, 2018; Hakim, 2019).

DSN MUI was formed based on the Decree of the Leadership Council of the Indonesian Ulema Council Number Kep-754/MUI/II/1999 dated February 10, 1999, concerning the Establishment of the MUI National Sharia Council. Until 2021, 141 fatwas have been issued. Among all these fatwas, there are three fatwas with the theme of a digital-based Islamic financial system, namely:

Table 1: Digital-Based Financial System Fatwa

NO.	FATWA NUMBER	TITLE OF FATWA
1	116/DSN-MUI/IX/2017	Sharia Electronic Money
2	117/DSN-MUI/II/2018	Information Technology-Based Financing Services Based on Sharia Principles
3	140/DSN-MUI/VIII/2021	Sharia Securities Offering through Information Technology-Based Crowdfunding based on Sharia Principles (Islamic Securities Crowd Funding)

Data source: DSN MUI website (*Fatwa – DSN-MUI*, n.d.)

The first and second fatwas in the table above are determined based on a request for a fatwa submitted by an IT- based financial institution. Sharia Electronic Money Fatwa is at the request of Veritra Sentosa International Limited Liability Company dated April 04 2017, and Fatwa 117/DSN-MUI/II/2018 is a response to the request of. Investree Radhika Jaya Limited Liability Company dated December 08, 2017, and Ammana Fintek Syariah Limited Liability Company dated February 6, 2018. The

third Fatwa is the result of the DSN MUI initiative, which held a meeting on May 2, 2021, and asked for a response from the Financial Services Authority (OJK) and the Indonesian Crowdfunding Service Association (ALUDI) until it was later determined on August 24, 2021.

The third Fatwa is the Fatwa on Sharia Securities Offering through Information Technology-Based Crowdfunding based on Sharia Principles (Islamic Securities Crowd Funding). Securities Crowd Funding (SCF) is an offering of securities or securities by the issuer as a party that requires funding through information technology-based crowdfunding services organized by crowdfunding organizers directly to investors through an open electronic system network. (Achsien & Purnamasari, 2016; Ramdania et al., 2022) In simple terms, in the context of commercial transactions, SCF is a method of raising funds with a partnership scheme carried out by business owners to start or develop their business through specific online applications or platforms that SCF organizers run. This SCF activity is a financial services activity in the capital market sector. This SCF fatwa results from the DSN MUI *ijtihad* initiative, which developed Fatwa Number 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles.

Although the first and second fatwas were based on a request, not an initiative of the DSN MUI in responding to the digitalization era, the DSN MUI was quite agile and progressive in responding to concerns about the certainty of sharia law on digital-based financial transaction activities. Discuss The e-money fatwa until it is determined to have taken about five months, and the IT-based financing service fatwa is even in a matter of one month.

Reflecting on the progressive legal theory, the law is for humans (Mashudi, 2017). In the context of progressive Islamic business law as represented by the DSN MUI Fatwa, the meaning constructed is Islamic business law which moves on to progressive *ijtihad*, which not only solves legal problems by trying to understand the meaning of the texts, both al-Quran and as-Sunnah. Then connects the text it is with its socio-historical context (*asbab an-nuzul* and *asbab al-wurud*). Still, more than that, it seeks to communicate with the current context by reading reality carefully to present legal solutions that are right on target and can be applied (Husni, 2021). Therefore, to answer the problems of contemporary *fiqh* with the spirit that Islam is *shalihun likulli zaman wa makan*, considering the *maqashid al-sharia* approach as a legal system is necessary. Because the challenges of Islamic law are not only related to internal Muslims

themselves but also to the extent to which Islamic teachings can contribute to modern civilization (Anshori, 2020). The progressive Islamic business law paradigm seeks to explore the values of *fiqh* law to be transformed into life. As well as the transformation of *fiqh* legal values into national law which is expected to bring benefits and shows the application of Sharia brings benefits and creates prosperity (Dahlan, 2018).

Epistemological Aspects in the Fatwa of DSN MUI with the Theme of Digitalization

The purpose of the Fatwa is to produce a good law with an objective assessment based on in-depth study, not justify a law requested by Islamic Financial Institutions and financial authorities based on personal or group interests with financial motives. For this purpose, fatwas must not be used as Sharia legitimacy to justify financial products and institutions that are not by Sharia in their operations and practices (Maksum, 2020). Therefore, the purpose of establishing the DSN MUI is to provide advice and fatwas to the government and financial authorities, produce fatwas and recommendations to Islamic financial institutions and maintain the socialization and acceleration of sharia economic development to the public (Maksum, 2020).

The determination of the DSN MUI fatwa follows the guidelines set by the MUI Fatwa Commission Number: U-596/MUI/X/1997 dated October 2, 1997 (Nafis, 2011). Judging from the legal *istimbath* method, the three fatwas above seem to have been determined using a combination of the *ta'lili* method (the *qiyas* method) and the *istishlahi* method (Nafis, 2011).

Ta'lili method, or what Syamsul Anwar calls the "causation method" (Quoted by Hasballah et al., 2021), can be identified in the legal considerations in the Fatwa that can ascertain the practice of electronic money and IT-based financing to have never existed in the past. The Prophet SAW lived until the time of the companions. DSN MUI uses the legal 'illat that money is the same as gold and dirhams which were previously used as a means of payment in muamalah transactions. So that whatever form it takes, as long as it functions as a means of payment, it is included in the category of money (*tsaman* or *nuqud*). This opinion was put forward by Ibn Hazm in the book of *Al-Muhalla* and is in line with the thought of Ibn Taimiyah in the Book of *Majmu' al-Fatawa* which was quoted in the Fatwa of DSN MUI Number 116/DSN-MUI/IX/2017 regarding sharia electronic money. As for the legal 'illat for IT-based

financing, it starts from the meaning of the contract in one assembly, because the assembly intended is more of the sense of tawajub (mutual determination). It results in a link between consent and qabul without considering the place where the contract takes place (the opinion of Muiyiddin Syarf al-Nawawi, Abdul Rahman al-Juzairi, and Wahbah al-Zuhaili).

The method *istislahi* (Syakroni, 2017; Wahid, 2020) used in the three fatwas above can be observed from the *fiqh* rules listed in the fatwa preamble, namely:

"All forms of muamalat are allowed unless there is proof that forbids it."

"All *dharar* (danger/loss) must be removed."

"All *dharar* (danger/loss) must be prevented as much as possible."

"Something that applies based on custom is the same as something that applies based on *syara'* (as long as it doesn't conflict with Sharia)."

"Customs can be established as law."

"The rule of law depends on the presence or absence of '*illah*.'"

"The leader's policy towards the people must follow the benefit of the (society)."

According to asy Syathibî, *maslahat* is for the benefit of His servants. Asy Syâthibî said, "*Indeed, these laws were made/required for the benefit of the servant.*" (asy Syathibî, 1997). So the laws are not made for the law themselves but are made for benefit (ad Dâraynî, 1975). This goal is basically to be achieved through *taklif* whose implementation depends on the reasoning of the primary legal sources, namely the Qur'an and hadith (Djamil, 1997). According to 'Abd as Salâm, all of the Sharia are beneficial, rejecting evil and attracting good (as Salâm, 2001). Therefore, the benefit is closely related to the Sharia. The comprehensiveness of Islamic teachings that are *rahmatan lil 'alamin* has shown Islamic law as the law that regulates *habluminallah* and *habluminannas* as well as the natural surroundings in life with worship and *muamalah*. Sharia cannot be separated from the purpose of presenting *mashalat*, and vice versa, *maslahat* cannot be separated from the existence of Sharia. The *fiqh* rule reads: "Where the *syara'* law is implemented, there is created benefit." (Isma'îl, 1958). Another rule reads: "Where benefit is realized, there is God's law" (asy Syinqîthî, 1990; az Zuhailî, 1985).

Sharia economic fatwas must be valid and accurate so that all products have a strong sharia foundation. The formulation of a sharia economic fatwa is not enough to look at contemporary muamalah *fiqh* books academically, let alone fixate on classical *fiqh* books hundreds of years ago. Still, it must look at the factual reality of the financial industry's needs with *maqashid* (benefit) glasses and their relevance to the present context (Nafi, 2017). Therefore, the combination of the naqli proposition and the aqli proposition (Nugraha & Hasan, 2022) is necessary for answering all contemporary problems and solving complex legal issues today, supported by the correct reading and understanding of reality. Therefore, texts and *ra'y* (reason) must be placed in the right position according to their role and portion so that their existence creates harmonious synergy.

The legality of the *istislahi* method depends on whether the text is supported. In this case, the scholars formulate three types of *maslahat*, namely *maslahat mu'tabarah*, *maslahat mulghah*, and *maslahat mursalah*. *Maslahat mu'tabarah*, namely benefits that are supported or mentioned directly by the *syara'* argument. *maslahat mulghah*, namely the benefit of being in an event or action activity that is rejected by *syara'* because it is contrary to Islamic teachings (Rosyadi & Basri, 2020). This benefit is not a true benefit it is only suspected of being a benefit (Hayatudin, 2019). *Maslahat mursalah*, namely the benefits that are between two other forms of *maslahat*: *maslahat mu'tabarah* (admitted/accepted benefits) and *maslahat mulghah* (rejected benefits). Suppose *maslahat mu'tabarah* is a benefit that is in line with and is directly supported by the text, while *maslahat mulghah* is a benefit contrary to the text. In that case, *maslahat mursalah* is a benefit believed to exist in a problem but is not supported by arguments that allow or command. At the same time likewise, there is no argument against it (Basri, 2020).

The general principle of *maqashid sharia* is to uphold the meaning of *jalb al-mashalih wa dar' al-mafasid* (getting benefits and avoiding harm). *Maqashid sharia* is an independent legitimacy because it shows the function of *ra'y* (reason) in seeking *maslahat* in every problem. The rapid development and the emergence of successive issues led to the need for applying *maqashid sharia* to open up gaps to move and take legal decisions to the demands of the times (Nur et al., 2020). The achievement of *maqashid sharia* is in benefit; therefore, in achieving this benefit it must remain within the shariah order so that it is not part of *maslahat mulghah*, but what is expected is benefit in the category of *maslahat*

mu'tabarah and *maslahat mursalah*. Therefore, Sharia cannot be separated from *mashalat*, and vice versa, the benefit cannot be separated from Sharia (Hidayatullah, 2020).

The Sharia aims to uphold human benefit in this world and the hereafter. Because the benefit is not measured by lust (Aminullah, 2021; Mayyadah, 2018), if something contains the benefit of the world without the benefit of the hereafter, it is not a benefit. Al-Ghazâlî emphasized the existence of *maslahat* by explaining what is meant by *maslahat* is the safeguarding of the objectives of the Sharia. The goals of the Sharia consist of five things, namely safeguarding religion (*hifzh ad-din*), defending the soul (*hifzh an-nafs*), and safeguarding the mind (*hifzh al-'aql*), guarding against offspring (*hifzh an-nasb*) and protecting property (*hifzh al-mal*). Therefore, anything that guarantees the preservation of these five main things is called benefit, and everything that escapes it is called *mafsadat* (damage) (al Ghazâlî, 1993). Al Ghazâlî makes a method of thinking by using *maslahat* one level below *qiyas* and accepts *maslahat* but the qualifications he provides to receive *maslahat* do not place *maslahat* as an independent thought principle (Kudaedah, 2020).

The benefit is the main goal in determining the three fatwas mentioned above. Refers to the epistemology of Islamic law developed by Asy-Syatibi (Arifin, 2015), and complemented by Najmuddin al-Thufi in the *maslahat* theory (Hasanah, 2011; Sarifudin, 2019), both of which emphasize the criteria for *maslahat* in three levels: *dharuriyah* (primary), *hajjiyah* (secondary), and *tahsiniyah* (complimentary). In addition, in order not to be too free and remain in the Sharia corridor, the benefits raised also have relevance to the theory of al Ghazâlî's *maslahat*. DSN MUI considers electronic money and technology-based services a necessity in the digital era and can provide convenience in muamalah transactions. However, the technology-based Islamic financial system must comply with the standardization of Islamic financial contracts. It is because the concept of Islamic finance is different from the concept of conventional finance that transactions containing *maysir* (gambling), *gharar* (unclear), *tadlis* (fraud), and *riba* (usury) are not allowed. In addition, in its implementation, every transaction carried out must refer to the main goal of sharia, namely *maslahat* in the *maqashid sharia corridor*, especially taking care of oneself (*hifz al nafs*) and guarding assets (*hifz al maal*) (Nurfalah & Rusydiana, 2019). For this reason, the DSN MUI stipulates that using digital technology in electronic money and financial services is permissible as long as it fulfills these two considerations.

Based on these epistemological considerations, DSN MUI requires that digital-based financing services based on sharia principles meet general provisions. Such as, implementing financial technology must not conflict with sharia principles. Namely, it must not contain elements of *usury*, *gharar*, *maysir*, *tadlis*, *rishwah* (bribes), and *israf* (extravagant) in the transactions carried out, and the object of the transaction must not contain haram and disobedience. The legal relationship in using sharia electronic money should use several contracts (akad) regulated in several other DSN MUI fatwas. Electronic money transactions involve several parties who must use *ijarah*, *ju'alah*, and *wakalah bi al ujah* contracts. These parties are issuers and electronic money providers (principals, acquirers, merchants), clearing providers, final settlement providers, and issuers and digital financial service agents, meanwhile, between publishers and users of digital money using *wadi'ah* or *qard* contracts.

Conclusion

The use of digital technology in the Islamic finance sector in Indonesia has received assurance of sharia legitimacy from the DSN MUI in the form of Electronic Money Fatwa, Fatwa on Information Technology-Based Financing Services Based on Sharia Principles, and further developed in the Fatwa on Islamic Securities Crowd Funding. Epistemologically, the value of the *maslahat* (benefit) is the main point in the three fatwas through the *ta'lili* and *istislahi* methods in extracting the law. These three fatwas show Islamic law's progress in developing digital finance business through a series of epistemological studies conducted by the DSN MUI. Financial Services Institution (OJK) must issue regulations to create binding legal certainty for various parties involved in digital-based business transactions by sharia principles. Meanwhile, only fatwa Number 140/DSN-MUI/VIII/2021 has been transformed into Financial Services Authority Regulation Number 16/POJK.04/2021 concerning Amendments to Financial Services Authority Regulation Number 57/POJK.04/2020 concerning Securities Offerings Through Services. Information Technology-Based Crowdfunding (Securities Crowdfunding), while Bank Indonesia or OJK has not received the other two fatwas. In the future, DSN MUI should be more active in responding to the other digital-based business activities that require affirmation of sharia signs. Such as marketplace systems, dropshipping, online shops, crypto, non-fungible tokens (NFT), and all related activities or transactions with metaverses.

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PROGRESSIVE ISLAMIC BUSINESS LAW IN THE DIGITAL ERA: EPISTEMOLOGICAL STUDY OF FATWA DSN MUI

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INTRODUCTION

- The economic and corporate sectors are heavily involved in the digital era through the internet as their primary tool.
- The Examples of digital finance:
 - Digital banking: ATM, internet, mobile, video, phone, and SMS banking. Several banks have also introduced branchless banking services and fintech services
 - Electronic money for a transaction
- digitalization can be both an opportunity and a challenge
- All innovations in digital-based the financial industry are aspects of muamalah that are relatively new (contemporary) in the field of Islamic law and, of course, become a challenge in the formation and renewal of Islamic law in Indonesia.
- Islamic law must be able to follow developments and changes in society and understand contemporary issues. the ability to respond quickly to contemporary issues in Islamic law is progressive *ijtihad*.
- DSN MUI has issued fatwas relating to electronic money, information, and technology-based payment transactions. To promote the application of Islamic law in economic and financial life, DSN-MUI must be proactive in responding to dynamic and rapid developments in the economic and financial sectors.
- This study explores the content of DSN MUI's fatwa regarding the digital finance paradigm and the epistemological aspects of Islamic law in the digital-themed DSN MUI Fatwa

METHODE

- This study uses a qualitative approach
- The primary data are the fatwas of the DSN MUI until 2021 with a digital theme, plus relevant secondary data in the form of books and journals
- Data analysis using content analysis techniques

RESULT AND DISCUSSION

Progressivity of DSN MUI towards Digital Finance Paradigm

- Digitalization requires all to move dynamically due to global competition with the competitiveness of financial products and services. Some various innovative digital-based services are not impossible to create new problems for the parties involved in the electronic transaction. The issue in question concerns the validity of the law and the clarity of the responsibilities of each party. That is because Islamic law emphasizes the halal aspect and the limits of benefit and harm.
- for Islamic financial institutions, DSN MUI Fatwa has four functions. *First*, as operational guidelines and products of Islamic financial institutions. *Second*, as a basis and reference for product development. *Third*, as a guideline for conforming to operational Sharia and sharia financial institution products. *Fourth*, as a basic guideline for DPS to oversee sharia compliance in supervised Islamic financial institutions.

PROGRESSIVITY OF DSN MUI TOWARDS DIGITAL FINANCE PARADIGM

In a legal opinion, the DSN MUI fatwa is an essential part of the development of sharia economics. Islamic values contained in sharia norms are confirmed in the fatwa.

Until 2021, 141 fatwas have been issued by DSN MUI. Among all these fatwas, there are three fatwas with the theme of a digital-based Islamic financial system, namely:

NO	FATWA NUMBER	TITLE OF FATWA
1	116/DSN-MUI/IX/2017	Sharia Electronic Money
2	117/DSN-MUI/II/2018	Information Technology-Based Financing Services Based on Sharia Principles
3	140/DSN-MUI/VIII/2021	Sharia Securities Offering through Information Technology-Based Crowdfunding based on Sharia Principles (Islamic Securities Crowd Funding)

- The first and second fatwas in the table above are determined based on a request for a fatwa submitted by an IT-based financial institution.
- The third fatwa results from the DSN MUI *ijtihad* initiative, which developed Fatwa Number 117/DSN-MUI/II/2018 concerning Information Technology-Based Financing Services Based on Sharia Principles.
- Based on the three fatwas, it is clear that DSN MUI is progressively responding to the digital finance paradigm.

EPISTEMOLOGICAL ASPECTS IN THE FATWA OF DSN MUI WITH THE THEME OF DIGITALIZATION

- The determination of the DSN MUI fatwa follows the guidelines set by the MUI Fatwa Commission Number: U-596/MUI/X/1997 dated October 2, 1997
- Judging from the legal *istimbath* method, the three fatwas above have been determined using a combination of the *ta'lili* method (the *qiyas* method) and the *istishlahi* method.

CONCLUSION

- The use of digital technology in the Islamic finance sector in Indonesia has received assurance of sharia legitimacy from the DSN MUI in the form of Electronic Money Fatwa, Fatwa on Information Technology-Based Financing Services Based on Sharia Principles, and further developed in the Fatwa on Islamic Securities Crowd Funding.
- Epistemologically, the value of the *maslahat* (benefit) is the main point in the three fatwas through the *ta'lili* and *istislahi* methods in extracting the law. These three fatwas show Islamic law's progress in developing digital finance business through a series of epistemological studies conducted by the DSN MUI.
- Suggestion: Financial Services Institution (OJK) must issue regulations to create binding legal certainty for various parties involved in digital-based business transactions by sharia principles. Meanwhile, only fatwa Number 140/DSN-MUI/VIII/2021 has been transformed into Financial Services Authority Regulation Number 16/POJK.04/2021 concerning Amendments to Financial Services Authority Regulation Number 57/POJK.04/2020 concerning Securities Offerings Through Services. Information Technology-Based Crowdfunding (Securities Crowdfunding), while Bank Indonesia or OJK has not received the other two fatwas. In the future, DSN MUI should be more active in responding to the other digital-based business activities that require affirmation of sharia signs. Such as *marketplace systems*, *dropshipping*, *online shops*, crypto, non-fungible tokens (NFT), and all related activities or transactions with metaverses.

*****Thank You*****

The Faculty of Sharia and Law of Syarif Hidayatullah State Islamic University Jakarta
in collaboration with the Faculty of Sharia of Mataram State Islamic University

Certificate

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