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Implementation of *I'Adah al- Nadzar* in The DSN-MUI Fatwa on *Kafalah bil Ujrah*

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Abstract:

The kafalah (guarantee) contract initially fell within the domain of tabarru (charitable) contracts. However, there is a difference of opinion (ikhtilaf) among scholars regarding the ruling of the kafalah bil ujrah contract (a guarantee contract accompanied by a fee). This study aims to explore the concept of I'adah al-Nadzhar and the opinions of scholars regarding the ruling of the kafalah bil ujrah contract, as well as the implementation of I'adah al-Nadzhar in DSN-MUI's fatwas. The results of the research show that the concept of I'adah al-Nadzhar is, in simple terms, a re-examination of previous scholarly opinions due to difficulties in their application, followed by adopting a new opinion, considered marjuh (weaker), as a guideline. The majority (jumhur) of scholars view the kafalah bil ujrah contract as prohibited because it resembles riba (interest). However, the National Sharia Council-Indonesian Ulema Council (DSN-MUI) permits the kafalah bil ujrah contract in several of its fatwas. Contrary to the view of the majority of Islamic jurists regarding the ruling of the kafalah bil ujrah contract, the DSN-MUI, based on the consideration of I'adah al-Nadzhar or re-examination, allows the kafalah bil ujrah contract. This is based on the reasoning that the ujrah is given for the jah (dignity/reputation) of the guarantor (kafil), the presence of hajjah (necessity), and to avoid harm (daf' al-dharar).

Key words:
I'adah al-Nadzar, *Kafalah bil Ujrah* Contract, National Sharia Council-Indinesian Ulema Council Fatwa

Introduction

In order to ensure sharia compliance, the launch of products by Islamic Financial Institutions (LKS) in Indonesia must be based on fatwas issued by the National Sharia Council-Indonesian Ulama

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Council (DSN-MUI). The DSN-MUI fatwas serve as the foundational framework that differentiates the operational basis of Islamic Financial Institutions (LKS) from Conventional Financial Institutions (LKK). These guidelines provide direction for LKS to issue dynamic products that align with the progress of the times. The dynamics of drafting regulations based on Sharia principles for Islamic Financial Institutions is a form of contribution from several related institutions to support the acceleration of product issuance related to Islamic Financial Institutions.[1]

The National Sharia Council-Indonesian Ulama Council (DSN-MUI) is a partner to government institutions that act as regulators in overseeing Islamic financial institutions. The government fully delegates the Sharia-related domain of Islamic financial institutions to DSN-MUI, such as in matters of verification. Additionally, the products and contracts used by Islamic financial institutions to operate must also be based on fatwas issued by DSN-MUI.[2] On one hand, DSN-MUI fatwas are a set of guidelines for society that are non-binding and carry no legal obligation for the public to adhere to. However, on the other hand, through certain mechanisms, the content of DSN-MUI fatwas can be absorbed and transformed into regulatory legislation with legal force and general binding effect.[3]

The fatwa issued by DSN-MUI related to the *kafalah* contract is the fatwa The National Sharia Council-Indonesian Ulama Council (DSN-MUI) has issued two fatwas regarding kafalah: Fatwa Number 11 of 2000 on Kafalah and Fatwa Number 57 of 2007 on Letter of Credit with Kafalah bi al-Ujrah Contract. Simply put, a *kafalah* contract is a guarantee contract provided by the guarantor (*kafil*) to a third party to fulfill the obligations of the second party or the guaranteed party

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[1] Bambang Iswanto, "Peran Bank Indonesia, Dewan Syariah Nasional, Badan Wakaf Indonesia Dan Baznas Dalam Pengembangan Produk Hukum Ekonomi Islam Di Indonesia," *Iqtishadia* 9, no. 2 (2016): 421–439., https://doi.org/http://dx.doi.org/10.21043/iqtishadia.v9i2.1738.

[2] Imron Rosyadi dan Rizka Irham Maulana, "Analysis of the Legal Status of Fees/Ujroh in Multiservice Financing with Kafalah Agreements (Comparison of DSN-MUI Fatwa with AAOIFI)," *AL-AFKAR: Journal for Islamic Studies* 7, no. 4 (2024): 115, https://doi.org/https://doi.org/10.31943/afkarjournal.v7i1.912.

[3] Nani Feliyani Nur Sholikin, "Analisis Dalil Hadis Dalam Fatwa DSN-MUI Nomor 58/DSN-MUI/V/2007 Tentang Hawalah Bil Ujrah," *Jurnal Masharif Al-Syariah: Jurnal Ekonomi Dan Perbankan Syariah* 7, no. 2 (2022): 791, https://doi.org/: http://dx.doi.org/10.30651/jms.v7i2.11415.

(*makful 'anhu*).[4] *Kafalah* or guarantee is a concept widely used in Islamic banking. As a form of guarantee that ensures obligations in financial transactions, it not only serves as a concept to protect the bank from the risk of default (where the bank acts as the beneficiary) but is also used to provide protection to third parties and shield them from potential risks arising from non-performance of payments or the failure to meet obligations that the customer has promised to fulfill (where the bank acts as the guarantor).[5]

In the contract concept found in classical fiqh literature, scholars position the *kafalah* contract within the domain of *tabarru* (non-commercial) contracts; this implies that *tabarru* contracts should not involve compensation, including fees (*ujrah*).[6] However, scholars have differing opinions (*ikhtilaf*) regarding the permissibility of *ujrah* or fees in the *kafalah* contract. The majority of scholars, including the Malikiyah, Hanafiyah, Shafi'iyah, and Hanabilah, prohibit the guarantor (*kafil*) from taking *ujrah* (compensation) for *kafalah bil mal* because the condition of compensation (*al-Ju'l*) in *kafalah* is considered a void transaction. The prohibition on taking payment applies whether it comes from the debtor (*rabbiddain/madin*) or from a third party (*ajnabiy*).[7]

Contrary to the view of the majority of jurists, the National Sharia Council-Indonesian Ulema Council, through its fatwa Number 57 of 2007 on Letter of Credit allows Islamic Financial Institutions to receive a fee (*ujrah*).[8] The permissibility of a fee in the *kafalah* contract, which

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[4] Ahmad Fatoni, "Analisis Fiqh Terhadap Kartu Kredit Syariah," *Muamalatuna* 14, no. 1 (2022): 22, https://doi.org/https://doi.org/10.37035/mua.v14i1.6363.

[5] Sri Sudiarti Muhammad Arfan Harahap, "Kontrak Jasa Pada Perbankan Syariah: Wakalah, Kafalah Dan Hawalah: Tinjauan Fiqh Muamalah Maliyah," *Reslaj: Religion Education Social Laa Roiba Journal* 4, no. 1 (2022): 48, https://doi.org/https://doi.org/10.47467/reslaj.v4i1.482.

[6] Muhammad Panca Prana Mustaqim Sinaga, "Analysis Of The Application Of Ujrah In The Kafalah Agreement Bil Ujrah Letter Of Sharia Credit," *Journal of Scientech Research and Development* 6, no. 1 (2024): 652, https://doi.org/https://doi.org/10.56670/jsrd.v6i1.395.

[7] Asep Supyadillah, "Penggunaan Akad Kafalah Bil Ujrah Pada Produk Wesel Ekspor: Sebuah Inovasi Produk Trade Financing," *Jurnal Emanasi, Jurnal Ilmu Keislaman Dan Sosial* 5, no. 2 (2022): 116.

[8] Uus Ahmad Husaeni, "Law on Fee (Ujrah) in Gratuitous Contract (Study On National Shariah Board-Indonesian Council of Ulama Fatwa," *Journal of Shariah Law Research (JSLR)* 3, no. 1 (2018): 126, https://doi.org/https://doi.org/10.22452/http://doi.org/10.22452/JSLR.vol3no1.6.

falls under the domain of *tabarru* contracts, is one form of innovation in Islamic financial products, particularly in Indonesia. The National Sharia Council-Indonesian Ulema Council (DSN-MUI), in issuing a fatwa on the permissibility of a fee in the *kafalah* contract, used the method of *I'adah al-nadzhar* or the theory of review. This research focuses on the opinions of scholars regarding the ruling on *ujrah* (fees) in the *kafalah* contract, as well as the implementation of *I'adah al-nadzhar* by DSN-MUI in formulating and issuing a fatwa on *kafalah bil ujrah*.

This study aims first, to explain the concept of I'adah al-Nadzhar from the perspective of usul al-fiqh (Islamic legal theory); second, to present the opinions of Islamic jurists regarding the ruling of the kafalah bil ujrah contract; and third, to analyze the implementation of I'adah al-Nadzhar in DSN-MUI's fatwas related to the Kafalah bil Ujrah contract.

Research Method

This research was conducted using a normative juridical approach, meaning the research was carried out by examining and analyzing secondary data, and it can also be referred to as a literature review study. The primary sources for this research are the fatwas of the National Sharia Council-Indonesian Ulema Council (DSN-MUI), particularly regarding the *Kafalah* contract and the DSN-MUI fatwa on Letter of Credit (L/C) with *Kafalah bil Ujrah* contract. The secondary sources include literature in the form of research results and books, especially those on contemporary *fiqh muamalah maliyyah*. The data analysis in this study uses a qualitative method, so statistical data calculations are not required.

Results And Discussion

Concept of I'adah al-Nadzhar

One of the efforts for developing Islamic economic law (mu'âmalah mâliyyah) is through the theory of I'adah al-Nadzhar, commonly referred to as "re-examination," which involves selecting the opinions of previous scholars on a legal issue. This theory is applied because some of the opinions of earlier scholars are considered inapplicable and inadequate. This has traditionally been a practice among classical Islamic scholars.

Re-examination of previous scholars' opinions is necessary when those opinions are no longer deemed suitable due to difficulties in implementation (ta'asur, ta'adzur aw shu'ubah al-'amal). One method

of re-examination involves reviewing established opinions (mu'tamad) and considering previously weaker (marjûh even mahjûr) legal opinions, due to new legal reasoning ('illah) or greater benefit (maslahah). These opinions can then become the established guide (mu'tamad) for contemporary legal rulings [9].

Reconsidering weaker opinions (marjûh) to become established guidance (mu'tamad) is an effort to address the stagnation of fiqh in the economic field (ahkâm al-iqtishâdiyyah), which has long been overshadowed by conventional business law theories. This theory is cautious and scientifically measured compared to opinions that are lenient in legal determinations, based on principles such as al-ashlu fî al-asyâ al-ibâhah (everything is permissible) or the presence of benefit (li al-mashlahah) or necessity (li al-hâjaj) [10].

According to Ma'ruf Amin, this theory serves as a middle path between two groups of Islamic economists: those who are too lenient in establishing sharia economic principles, leading to mere labeling, and those who develop sharia economics strictly adhering to classical fiqh principles that may be difficult to apply in the current era [11].

This theory is based on the fiqh principle:

الحُكْمُ يَدُوْرُ مَعَ عِلَّتِهِ وُجُوْداً وَعَدَماً

"*The law operates in accordance with its 'illah, whether it is present or absent.*"[12].

This principle is crucial in explaining the relationship between law and its 'illah (legal reason), which forms the basis of legal rulings. This principle, as a grand theory encompassing all Islamic law, reflects that the 'illah of law always rests on the sharia wisdom of commands and prohibitions, often linked to public welfare (maslahah).

Another related principle is:

إِذَا زَالَتْ العِّلَةُ زَالَ الحُكْمُ

[9] Ma'ruf Amin, *Era Baru Ekonomi Islam Indonesia: Dari Fikih Ke Praktik Ekonomi Islam* (Depok: Elsas, 2011).

[10] Amin.

[11] Amin.

[12] Muhammad Shadiqi Ibn Ahmad Ibn Muhammad Alu Burunu Abu al-Harits Al-Ghazi, *Mausû'ah Al-Qawâ'id Al-Fiqhiyyah* (Beirut: Muasasah al-Risâlah, 2003).

"When the 'illah of law is absent, the law is also absent." [13].

The basis of ijtihad by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) is i'adah al-nadzhar. This allows DSN-MUI to re-evaluate the opinions of previous scholars if they are challenging to apply, by re-examining the arguments used, possibly due to different 'illah or conditions [14]. This basis signifies that the door of ijtihad remains open for contemporary scholars, emphasizing the need for ongoing, structured education on the importance of ijtihad. This approach counters the view that ijtihad is closed or that no current scholars meet the conditions for ijtihad. The theory of i'adah al-nadzhar, as used by DSN-MUI, reflects this openness, showing a preference for re-evaluating and sometimes adopting minority opinions for the sake of maslahah and adapting to contemporary business practices.

The foundation of I'adah al-Nadzhar is a clear statement from DSN-MUI that the door of ijtihad remains open for contemporary scholars. There is a need for massive, continuous, and structured education about the importance of ijtihad so that new mujtahids (independent jurists) can emerge to address contemporary issues in the ever-evolving field of fiqh muamalah [15]. The openness of ijtihad is a significant topic in the study of usul fiqh and is a point of contention among scholars. The correct opinion, as stated by Ibn Qayyim al-Jauziyyah, is that ijtihad remains open as long as its conditions are fulfilled [16].

The open door of ijtihad is a realistic and necessary measure to ensure that Islam, as a mercy to all the worlds, can address contemporary problems, requiring new thoughts and ideas while

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[13] Abu Ya'la Muhammad Ibn al-Husain Ibn Muhammad Ibn Khalf Ibn Al-Fara, *Al-'Uddah Fî Ushûl Al-Fiqh* (KSA: Jami'ah al-Malik Muhammad Ibn Su'ud al-Islamiyyah, 1990).

[14] Sofwan Jauhari, *Fatwa Ulama Indonesia & Timur Tengah Mengenai Multi Level Marketing (MLM)* (Cirebon: Nusa Litera Inspirasi, 2019).

[15] Hamdan Rasyid, "Optimalisasi Peran MUI Sebagai Mufti Resmi Indonesia Di Tengah Benturan Liberalisme Dan Fundamentalisme," in *Fatwa Majelis Ulama Indonesia Dalam Perspektif Hukum Dan Perundang-Undangan* (Jakarta: Puslitbang Lektur Dan Khazanah Keagamaan Balitbang Dan Diklat Kemenag RI, 2012).

[16] Ibn Qayyim Al-Jauziyah, *I'lâm Al-Muwaqqi'în 'An Rabb Al-'Âlamîn* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1991).

adhering to sharia principles. Scholars like al-Syaukani also support the openness of ijtihad to this day [17].

The theory of I'adah al-Nadzhar used by DSN-MUI represents a significant breakthrough, countering the view that ijtihad is now closed or that current scholars do not meet the conditions for ijtihad. This theory includes revisiting the majority opinion and selecting the minority view.

Re-examining scholars' opinions and/or fatwa institution decisions can be done for two reasons: either the majority opinion (considered râjih [superior]) does not provide a solution for current events needing sharia clarity, allowing for the selection of a weaker opinion (marjûh); or the scholars' opinion and/or fatwa institution decision is deemed no longer suitable/relevant due to changing maslahah [18].

Re-examination in the first case is seen as a means to find solutions (makhârij) for legal stagnation and deadlock, requiring mujtahid-muftis to work diligently to realize sharia benefits at all times, in various places and situations, by abandoning old decisions and replacing them with new ones due to difficulties in implementing the old opinion.

Reconsidering weaker opinions (marjûh) to become established guidance (mu'taad) is a breakthrough effort to address the stagnation of fiqh in the economic field, which has long experienced inertia amidst the dominance of conventional business law theories. Developing this theory is more cautious and scientifically measured compared to lenient scholars who set laws based on the principle "al-ashl fî al-asyâ al-ibâhah" (the default ruling on things is permissibility) or the presence of maslahah (benefit) or necessity (hâjjah) [19].

This theory is a moderate approach between Islamic economic law scholars who are too lenient in applying sharia economic principles, leading to mere labeling, and those who develop Islamic economics strictly adhering to classical fiqh principles, which may be

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[17] Muhammad Ibn Ali Ibn Muhammad Al-Syaukani, *Al-Qaul Al-Mufid Fî Adillah Al-Ijtihâd Wa Al-Talqîd* (Kuwait: Dar al-Qalam, n.d.).

[18] Jasir 'Audah, *Maqâhid Al-Syarî'ah Ka Falsafah Li Al-Tasyrî Al-Islâmî: Ru'yah Manzhumiyyah* (Herdon-USA: The International Institute of Islamic Thought, 2012).

[19] Hasanudin, *Metodologi Istinbath Dalam Penerbitan Fatwa DSN-MUI* (Bandung: Hasanudin, Metodologi Istinbath Dalam Penerbitan Fatwa DSN-MUI (Bandung: Pusat RISKALIKBANG Fatwa DSN-MUI dan Simbiosa Rekatama Media, 2024).

difficult to apply today. The basis of this theory is the principle: "The law operates in accordance with its 'illah (legal reason), whether it is present or absent."

Operationally, the reference for changing laws according to the above usul fiqh principle is based on the presence or absence of its 'illah. 'Illat is an attribute in a matter whose ruling is determined by nas (the primary source) on which the law is established. If 'illat exists, so does the law; if 'illat is absent, the law does not apply.

This principle is crucial in explaining the relationship between law and its 'illah. Whether 'illah exists or not, the origin of the law is always based on 'illah. This principle is a grand theory covering all Islamic law because 'illah law represents the sharia wisdom of commands and prohibitions. Scholars generally analyze the objectives of the law (maqâshid al-syarî'ah), linking 'illah law to maslahah. Another similar principle is: "If the 'illah law is absent, the law is also absent" (اذا زالت العلة زال الحكم) [20]

Izz al-Din Ibn Abd al-Salam states that the law disappears with the loss of 'illah. If grape juice turns into wine, its purity disappears; if wine turns into vinegar, its impurity disappears. Similarly, childhood, forgetfulness, unconsciousness, sleep, and insanity are reasons for the loss of legal responsibility and capacity. If these attributes disappear, the individual regains legal responsibility, and their actions become valid [21]. Jaser Auda advocates for I'adah al-Nadzhar when there is a deviation between means (wasâil) and goals and/or expected conditions (ghâyah), to choose and/or obtain other means (wasîlah) that likely contribute to the desired or undesired state [22]. Therefore, re-examination or I'adah al-Nadzhar must be carried out when agreed and ratified sharia opinions and/or legal decisions are ineffective as means (wasîlah) to achieve sharia objectives.

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[20] Ali Ahmad Al-Nadwi, *Mausû'ah Al-Qawâ'id Wa Al-Dhawâbith Al-Fiqhiyyah Al-Hâkimah Li Al-Mu'âmalât Al-Mâliyyah Fî Al-Fiqh Al-Islâmî* (Kuwait: Dâr 'Âlim al-Ma'rifah, 1999).

[21] Abi Muhammad Izz al-Din 'Abd al-'Aziz Ibn 'Abd al-Salam Al-Silmi, *Qawâ'id Al-Ahkâm Fî Mashâlih Al-Anâm* (Kairo: Mathba'ah al-Istiqamah, n.d.).

[22] 'Audah, *Maqâhid Al-Syarî'ah Ka Falsafah Li Al-Tasyrî Al-Islâmî: Ru'yah Manzhumiyyah*.

Substance of the DSN-MUI Fatwa on Kafalah

The National Sharia Council-Indonesian Ulema Council (DSN-MUI) has issued two fatwas regarding kafalah: Fatwa Number 11 of 2000 on Kafalah and Fatwa Number 57 of 2007 on Letter of Credit with Kafalah bi al-Ujrah Contract. The substance of the National Sharia Council-Indonesian Ulema Council (DSN-MUI) Fatwa Number 11 of 2000 on Kafalah can be divided into two parts, namely:

1. General Provisions of Kafalah, consisting of:
   a. The declaration of offer (ijab) and acceptance (qabul) must be expressed by the parties to indicate their intention to enter into a contract (akad).
   b. In a kafalah contract, the guarantor may receive a fee as long as it is not burdensome.
   c. A kafalah with a fee is binding and cannot be unilaterally revoked.
2. The pillars and conditions of kafalah consist of two parts:
   a. Provisions regarding legal entities, consisting of:
      1) Guarantor (kafil); the kafil must be of legal age and of sound mind, fully entitled to engage in legal actions regarding their assets, and willing (ridha) to assume the responsibilities of the kafalah.
      2) The debtor (ashil, makful 'anhu) must be able to transfer their obligation (debt) to the guarantor and be known by the guarantor.
      3) The creditor (makful lahu) must be identifiable, able to be present at the time of the contract or grant power of attorney, and of sound mind.
   b. Fatwa provisions regarding the object of the guarantee (makful bih), consisting of:
      1) The object of the guarantee must be the obligation of the debtor, whether it is money, goods, or services.
      2) The object of the guarantee must be executable by the guarantor.
      3) The object of the guarantee must be a binding debt (lazim) that cannot be discharged except by payment or release.
      4) The object of the guarantee must have a clear value, amount, and specification.

5) The object of the guarantee must not contradict Sharia (be prohibited).

The next fatwa from the National Sharia Council-Indonesian Ulema Council (DSN-MUI) related to the kafalah contract is DSN-MUI Fatwa Number 57 of 2007 on Letter of Credit (L/C) with Kafalah bil Ujrah Contract. Generally, the fatwa is divided into two parts, which are:

1. General provisions, consisting of:
   a. Kafalah is a contract of guarantee provided by the guarantor (kafil) to a third party (makful lahu) to fulfill the obligations of the second party or the guaranteed (makful 'anhu, ashil).
   b. An L/C with a kafalah bil ujrah contract is a guarantee provided by an Islamic Financial Institution (LKS) for export-import trade transactions conducted by a client based on a kafalah contract, and for this guarantee service, the LKS receives a fee (ujrah).
2. Contract Provisions, consisting of:
   a. All pillars and conditions of the kafalah bil ujrah contract in this fatwa refer to Fatwa No. 11/DSN-MUI/IV/2000 on Kafalah.
   b. The application of the kafalah contract in L/C transactions for both export and import refers to Fatwa No. 34/DSN-MUI/IX/2002 on Sharia Import Letters of Credit and Fatwa No. 35/DSN-MUI/IX/2002 on Sharia Export Letters of Credit.
   c. The fee for the kafalah contract transaction must be agreed upon and stated in the contract.

The Opinion of the Fuqaha (Islamic Jurists) Regarding the Ruling on Kafalah Bil Ujrah (Guarantee with Compesation)

The Fuqaha (Islamic jurists) have differing opinions regarding the ruling on the contract of kafalah bil ujrah (guarantee with compensation). According to the comparative jurisprudence books (*muqaranah madzahib*), there are three main opinions among scholars regarding the ruling on the kafalah bil ujrah contract. The first opinion is the one that prohibits the kafalah contract accompanied by compensation (kafalah bil ujrah). This first opinion is supported by at least seven arguments, the first of which is: Indeed, the guarantee

(kafalah) turns into a debt when the guarantor pays the party guaranteed, and if the guarantor gains profit from it, it becomes a debt that yields a benefit, which constitutes *riba* (usury). Scholars have reached consensus on the prohibition in Shariah of any addition or benefit in a *qardh* (loan) contract.

The second argument is as follows: If Shariah has prohibited a lender from explicitly taking compensation for a loan, and this is agreed upon when stipulated, then it is even more important to prohibit the party committed to providing the loan in case the debtor is unable to fulfill their obligation, namely the guarantor, from taking compensation for that guarantee.

The third argument presented by the first opinion is that, in essence, a guarantee is a form of pure benevolence that is non-material (non-commercial), intended to secure rights and is based on kindness and goodwill. Taking compensation for providing a guarantee contradicts this purpose and changes its nature, turning it into a commercial transaction and a means of seeking profit. This argument is supported by the opinion of al-Abhari from the Maliki school of thought, who stated that it is not permissible to provide a guarantee in exchange for compensation because a guarantee is a form of benevolence, and it is not allowed to take compensation for acts of goodwill, just as it is not permitted for fasting or prayer, because such acts are not meant for worldly gain. [23]. As for providing a guarantee explicitly in exchange for compensation, there is no disagreement regarding its prohibition, because Shariah stipulates that guarantees, social influence, and loans should be carried out solely for the sake of Allah Ta'ala. Therefore, taking compensation for such acts is forbidden[24].

The fourth argument is that a guarantee, in essence, does not provide something of value that would entitle the guarantor to take compensation. The guarantor does not provide money as a form of trade that would warrant compensation, nor does he perform work that would deserve a wage. He merely commits to paying what is owed by the party guaranteed in the event of a debt default. Therefore, taking

[23] Muhammad Ibn Yusuf Ibn Abi al-Qasim al-'Abdari al-Gharnathi Abu Abdullah, *Al-Tâj Wa Al-Iklîl Limukhtashar Khalîl* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1994).

[24] Muhammad Ibn Ahmad Ibn 'Arfah Al-Dasuqi, *Hayisyah Al-Dasuqi 'Ala Al-Syarh Al-Kabir* (Beirut: Dar al-Fikr, n.d.).

compensation without providing something in return does not fall under the category of trade permitted by Allah. The basis for this is Surah al-Nisa, verse 29. Indeed, the claimant has no right to gain additional money through this guarantee, thus it is not permissible to demand compensation in return. However, the guarantee is allowed if no compensation is stipulated within it. [25]. Since compensation is only rightfully given in exchange for work, and a guarantee is not considered work, it is therefore not entitled to compensation. [26]

Furthermore, the fifth argument presented by the first opinion is that taking compensation or a fee for providing a guarantee involves *gharar* (uncertainty). This is because it falls under a transaction that contains uncertainty, as the person who takes ten in exchange for guaranteeing one hundred does not know whether the person guaranteed will go bankrupt or disappear, causing the guarantor to lose one hundred while only receiving ten, or whether the guarantor will be free from loss and still receive the ten.[27]. Indeed, the condition of compensation in a guarantee transforms it into a commercial transaction. If the compensation for the guarantee is ten, and the amount guaranteed is one hundred, with the debtor's ability to repay the debt being uncertain, then it is possible that the debtor may repay the debt, allowing the guarantor to receive ten as compensation for the guarantee. Alternatively, the debtor may go bankrupt or disappear, forcing the guarantor to cover the one hundred while only receiving ten.

Then, the sixth argument relies on the opinion of Sarakhsi, who states as a reason for the prohibition: "This is because taking compensation for a guarantee is a form of bribery, and bribery is forbidden, as the claimant/guarantor has no right to gain additional money through this guarantee. Therefore, it is not permissible to demand compensation in return."." [28]

The seventh argument is based on the existence of consensus (*ijma'*). Some have mentioned the presence of *ijma'* or the absence of

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[25] Muhammad Ibn Ahmad Ibn Sahl Syam al-Aimah Al-Sarkhasi, *Al-Mabsûth* (Beirut: Dar al-Ma'rifah, 1993).

[26] Abu al-Hasan 'Ali Ibn Muhammad Ibn Muhammad Ibn Habib al-Bashri al-Baghdadi Al-Mawardi, *Al-Hâwî Al-Kabîr* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1999).

[27] Abd al-Baqi Ibn Yusuf Ibn Ahmad Al-Zurqani, *Syarh Al-Zurqânî 'Alâ Mukhtashar Al-Khalîl* (Beirut: Dar al-Kutub al-'Ilmiyyah, 2002).

[28] Al-Sarkhasi, *Al-Mabsûth*.

knowledge regarding any disagreement: Ibn al-Mundhir stated, "We have agreed, based on the knowledge we have from all the scholars, that taking compensation for a guarantee is not permissible and is not allowed." [29]. Ibn al-Mundhir's opinion aligns with that of al-Qurafi, who stated that the scholars unanimously agreed that if a creditor asks someone to guarantee their debt in exchange for compensation, it is not permissible. [30]. Similarly, al-Hathabi from the Maliki school of thought opined that there is no disagreement in prohibiting guarantees with compensation [31].

The second opinion is the one that permits the kafalah contract accompanied by compensation (kafalah bil ujrah). Some contemporary scholars believe that it is permissible to take compensation for providing a guarantee. Shaykh Abdurrahman bin Sa'di inclined toward this opinion in one of his statements, although he mentioned that it goes against what is preferable. This opinion was also expressed by Shaykh Ali Al-Khafif, Abdullah Al-Mun'im, Ahmad Ali Abdullah, Zakariya Al-Bari, Mustafa Abdullah Al-Hamshari, and Muhammad Mustafa Al-Shanqiti.

This second opinion is based on eight arguments. The first argument is as follows:

عَنْ عَائِشَةَ أَنَّ رَجُلًا اشْتَرَى غُلَامًا فِي زَمَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ وَبِهِ عَيْبٌ لَمْ يَعْلَمْ بِهِ فَاسْتَغَلَّهُ , ثُمَّ عَلِمَ الْعَيْبَ فَرَدَّهُ فَخَاصَمَهُ إِلَى النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ , فَقَالَ: يَا رَسُولَ اللهِ إِنَّهُ اسْتَغَلَّهُ مُنْذُ زَمَانٍ , فَقَالَ رَسُولُ اللهِ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: " الْغَلَّةُ بِالضَّمَانِ " وَكَذَلِكَ رَوَاهُ يَحْيَى بْنُ يَحْيَى , عَنْ مُسْلِمِ بْنِ خَالِدٍ إِلَّا أَنَّهُ قَالَ: " الْخَرَاجُ بِالضَّمَانِ "

From Aisha, it is narrated that a man bought a slave during the time of the Prophet (peace and blessings be upon him), and the slave had a defect that the man was unaware of. He benefited from

[29] Abu Bakar Muhammad Ibn Ibrahim Ibn al-Mundzir Al-Naisaburi, *Al-Isyrâ 'Alâ Madzâhib Al-'Ulamâ* (UEA: Maktabah Makkah al-Tiqafiyyah, 2004).

[30] Syihab al-Din Al-Qurafi, *Al-Furûq: Anwâr Al-Burûq Fî Anwa'i Al-Furûq* (Beirut: 'Alam al-Kitab, n.d.).

[31] Syams al-Din Abu Abdullah Muhammad Ibn Muhammad Abd al-Rahman al-Tharabulsi Al-Hathabi, *Mawâhib Al-Jalîl Syarh Mukhtashar Khalîl* (Beirut: Dar al-Fikr, 1992).

the slave, then discovered the defect and returned the slave. He brought this matter to the Prophet (peace and blessings be upon him) and said, "O Messenger of Allah, he has benefited from him for a certain period." The Prophet (peace and blessings be upon him) said, "The benefit is in proportion to the liability." Yahya bin Yahya also narrated this from Muslim bin Khalid, but he said, "The benefit is in proportion to the liability."."[32]

The reasoning from this hadith is that it shows that whoever bears the risk of guaranteeing something, if the item is damaged, is entitled to benefit from the item that is guaranteed. Based on this principle, the guarantor must pay the party being guaranteed if they fail to fulfill their obligation. Therefore, the guarantor is entitled to a share of the profit.[33].

The second argument presented by the opinion that permits taking a fee for providing a guarantee (kafalah) is based on the following narration:

قَالَ رَسُولُ اللَّه صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ: «لَا يَحِلُّ سَلَفٌ وَبَيْعٌ، وَلَا شَرْطَانِ فِي بَيْعٍ، وَلَا رِبْحُ مَا لَمْ تَضْمَنْ، وَلَا بَيْعُ مَا لَيْسَ عِنْدَكَ»

The Messenger of Allah (peace and blessings be upon him) said: "It is not permissible to combine a loan and a sale, nor to combine two conditions in one sale, nor to profit from something that is not guaranteed, nor to sell something that is not in your possession."[34].

The reasoning from this hadith is that the Prophet (peace and blessings be upon him) prohibited profiting from something that is not yet someone's responsibility. Therefore, it can be understood that taking on responsibility (guarantee) is a legitimate reason for being entitled to profit.

The third argument is mentioned in the book *al-Mudawanah al-Kubra*: Ibn Juraij said: Ibn Shihab said: "Uthman and Abdurrahman were the two companions of the Messenger of Allah (peace and

[32] Al-Baihaqi, *Al-Sunan Al-Kubrâ* (Beirut: Dâr al-Kutub al-'Ilmiyyah, 2003).

[33] Muhammad Utsman Syubair, *Al-Qawâ'id Al-Kulliyyah Wa Al-Dhawâbith Al-Fiqhiyyah Fî Al-Syarî'ah Al-Islâmiyyah* (Yordania: Dâr al-Nafâis, 2007).

[34] Abu Dawud, *Sunan Abî Dâwud* (Beirut: Dâr al-Fikr, 2007).

blessings be upon him) most diligent in trade, so people said, 'If only they would engage in a transaction so that we could see who is more diligent.' Then, Abdurrahman bought a horse from Uthman for twelve thousand dirhams on the condition that if the horse was healthy today, it would be his, and Abdurrahman was confident that he knew the horse well. Then Abdurrahman said to Uthman: 'Do you want me to add four thousand dirhams more and the horse remains yours until my messenger comes to take it?' Uthman replied: 'Yes.' So, Abdurrahman added four thousand dirhams more for it, but the horse died before Abdurrahman's messenger arrived, so the people knew that Abdurrahman was more diligent than Uthman bin Wahb." Yunus narrated from Ibn Shihab with the same meaning, saying: "He (Abdurrahman) found that the horse had died when he loosened its reins, so the responsibility fell on the seller."[35].

According to Nazih Hammad, it is clear from this text that Uthman bin Affan sold his commitment to guarantee his horse to Abdurrahman bin Auf until Abdurrahman's messenger came to take it, after it had left Uthman's ownership and guarantee through a sale contract for four thousand dirhams. Therefore, when the horse died, the loss was borne by Uthman's wealth based on the transaction of exchanging the guarantee commitment. Since there is no record of any companion opposing or rejecting what happened, and the people were aware of it as mentioned in the narration, this constitutes an *ijma'* (silent consensus) among them regarding the permissibility of exchanging a commitment to bear the risk of loss of another person's property.[36].

The fourth argument presented by those who permit taking a fee for the kafalah contract is that the basic principle in transactions is permissibility unless there is evidence prohibiting it. In the matter of the guarantee contract with a fee, there is no evidence that prohibits it. Shaykh Ali al-Khafif, as quoted by Sulaiman Ibn Ahmad, opined that there is no text in the Quran or the Sunnah of the Prophet that prohibits taking a fee for the kafalah contract, so it returns to the original principle in transactions, which is that it is permissible. [37].

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[35] Malik Ibn Anas Ibn Malik Ibn 'Amir al-Ashbahi Al-Madani, *Al-Mudawwanah Al-Kubrâ* (Beirut: Dar al-Kutub al-'Ilmiyyah, 1994).

[36] Nazih Hammad, *Fî Fiqh Al-Mu'âmalât Wa Al-Mashrifiyyah Al-Mu'âhirah: Qirâah Jadîah* (Beirut: Dar al-Qalam, 2007).

[37] Sulaiman Ibn Ahmad Al-Mulahim, *Akhdz Al-'Iwadh 'Alâ Al-Dhamân* (KSA: Dar Kunuz Isybilya, 2017).

Shaykh Abdullah bin Mani' said: "The opinion that prohibits taking compensation for providing a guarantee is not based on any text from the Book of Allah (the Quran), the Sunnah of His Messenger, or the statements or actions of the Companions of the Messenger of Allah. Essentially, in transactional matters, everything is permissible, including guarantees and surety, which allows for the inclusion of a fee."[38]. Similarly, Nazih Hammad stated that there is no Shariah text that prohibits the inclusion of a fee or compensation in a kafalah contract. [39].

The fifth argument presented by the scholars who permit taking a fee for the kafalah contract is based on the principle of *maslahah mursalah* (public interest). Shaykh Ali Al-Khafif, as quoted by Sulaiman Ibn Ahmad, stated: "Because it is something required for the common good... Therefore, taking a fee for the kafalah contract and bearing the risk is permissible based on the original permissibility and is valid according to *maslahah mursalah*." Similarly, Zakariyya al-Burri, as quoted by Sulaiman Ibn Ahmad al-Mulahim, mentioned that "No harm (*mafsadah*) is found in taking a fee for the kafalah contract, nor is any benefit found in prohibiting it. On the contrary, there is a benefit in permitting it."[40].

The sixth argument supporting the opinion that permits taking a fee for the kafalah contract is based on *istihsan* (juridical preference). Zakariyya al-Burri, as quoted by Sulaiman Ibn Ahmad al-Mulahim, opined that if compensation in a kafalah contract is generally prohibited according to some jurists, it can be allowed as an exception to the basic rule based on *istihsan*, taking into consideration the general and specific benefits. [41].

The seventh argument put forth by those who permit taking a fee for guarantee services (kafalah) is based on *ijtihad takhrij* (derivative legal reasoning), which is the permissibility of taking a fee for a guarantee and what some scholars have allowed regarding the right to profit in Syirkah Al-Wujuh (partnership based on creditworthiness), even though both do not rely on capital or labor, but rather, the profit is earned through the act of guaranteeing.

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[38] Al-Mulahim.

[39] Nazih Hammad, *Qadhâyâ Fiqhiyyah Mu'âshirah Fî Al-Mâl Wa Al-Iqtishâd* (Beirut: Dar al-Qalam, 2012).

[40] Al-Mulahim, *Akhdz Al-'Iwadh 'Alâ Al-Dhamân*.

[41] Al-Mulahim.

Shaykh Ahmad Ali Abdullah said: "The Hanafi, Hanbali, and Zaidi schools of thought have permitted Syirkah Al-Wujuh, which is a partnership that does not rely on capital or labor, but rather on the reputation of the partners and the trust people have in their level of commitment. Through this trust alone, they are entitled to profit. Therefore, those who oppose the permissibility of Syirkah Al-Wujuh argue that profit should only be earned through capital or labor, while in this case, there is neither capital nor labor. However, these scholars have allowed that reputation and the commitment it generates can be a reason for earning profit. So why shouldn't it also be considered a reason for receiving compensation in a letter of guarantee (kafalah bil ujrah)? This is further supported by the statement of Ibn al-Hamam from the Hanafi school, who said: 'The right to profit in Syirkah Al-Wujuh is based on the act of guaranteeing.'" [42].

Finally, the eighth argument presented by scholars who permit taking a fee for the kafalah contract is based on *qiyas* (analogy). According to those who permit it, there is an analogy between taking compensation for providing a guarantee and taking compensation for using influence or reputation. Some jurists allow taking compensation for the use of influence, and a guarantee is a type of influence or reputation and is similar to it.

Abu Abdullah Al-Quri, a jurist from the Maliki school, was once asked about the ruling on the "price" or "payment" for using influence or power (*Thaman al-Jah*). He replied: "Our scholars, may Allah be pleased with them all, have differed in opinion regarding the ruling on 'price' for using influence. Some say that it is absolutely forbidden, some say it is disliked (*makruh*) without exception, and others provide details. If the person with influence incurs expenses, effort, travel, or frequent comings and goings, then taking compensation equivalent to the work involved is permissible. However, if this is not the case, then it is forbidden. In any situation, one should not engage in such matters for charity or to build a mosque and similar things. Instead, it is better to avoid such difficulties altogether."[43].

Imam An-Nawawi was once asked about a person who suffered injustice and then gave money to someone who used their influence

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[42] Kamal al-Din Muhammad Ibn Abd al-Wahid Ibn al-Humam, *Fath Al-Qadîr* (Beirut: Dar al-Fikr, n.d.).

[43] Al-Dasuqi, *Hayisyah Al-Dasuqi 'Ala Al-Syarh Al-Kabir*.

and connections to free them. Is this permissible? Have any scholars discussed this matter? Imam An-Nawawi replied: "Yes, it is permissible, and this has been explained by several scholars, including Qadhi Hussein, whose statement was quoted by Al-Qaffal Al-Marwazi. He said: 'This is a permissible wage (*ja'ala mubah*) and does not fall under the category of bribery (*rishwa*). Rather, this compensation is lawful, just like other forms of wages.'" [44].

In certain cases, paying someone to use their influence in situations of injustice is considered legitimate and is not classified as bribery according to the scholars mentioned.

Ibn Qudamah said: "If someone says, 'Lend me one hundred (money), and I will give you ten (as compensation),' this is permissible, because it is considered a wage (*ju'alah*) for the use of their influence."[45]

The opinion of Ibn Qudamah above indicates that giving compensation to someone for lending money using their influence is considered permissible according to Ibn Qudamah, and such compensation is treated as lawful wages.

According to the third opinion, which provides specific details, the conclusion of this opinion is that it is not permissible to take compensation for guarantees except in situations where it does not lead to a loan, or in other words, it does not result in a debt obligation between the guarantor and the guaranteed party." This opinion is also expressed by Dr. Hassan al-Amin, Nazih Hammad, and Muhammad Ali al-Qari ibn Eid. This view has been adopted by the Sharia Council of Bank al-Bilad by majority vote, as well as by the Sharia Council of Bank al-Jazira. [46].

The first argument presented by the third opinion is that the only argument used by those who prohibit is that taking compensation for guarantees leads to loans that generate profit. Therefore, this prohibition should be limited only to cases where this occurs and should not apply to other situations. Furthermore, if there is a proven consensus, it must be understood within this context.

Furthermore, the second argument presented by this third opinion is that 'a pure commitment is something that can be exchanged

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[44] 'Ala al-Din Ibn Al-'Athar, *Fatâwâ Al-Imâm Al-Nawawî Al-Musammâ Bi Al-Masâil Al-Mantsûrah* (Beirut: Dar al-Basyair, 1996).

[45] Ibn Qudamah al-Maqdisi, *Al-Mughnî Li Ibn Qudâmah* (Kairo: Maktabah al-Qâhirah, 1968).

[46] Al-Mulahim, *Akhdz Al-'Iwadh 'Alâ Al-Dhamân*.

for money, as it contains desired benefits and legitimate interests. Some scholars permit taking compensation for various types of commitments that are lawful according to Sharia, even if the object is not money. For example, a husband's commitment to his wife not to marry again in exchange for a certain compensation received from her, or a wife's commitment not to remarry after her husband's death in exchange for a certain compensation. Similarly, a wife may commit to waiving her rights related to marital relations, visitation rights, and other rights in exchange for money, and they permit the sale of *urbun* (down payment), which is the price for the seller's commitment to cancel the contract if the buyer chooses to do so within a specified period.

Implementation of I'adah al-Nadzar in the National Sharia Council-Indonesian Ulama Council (DSN-MUI) Fatwa on Kafalah Bil Ujrah

The contract of kafalah is a part of the tabarru' (charitable) contract. Providing a guarantee is a form of obedience to Allah and His Messenger. The guarantor (kafil) is entitled to receive rewards from Allah, as the kafalah contract contains the value of mutual assistance in goodness, as stated in the Quran, Surah Al-Maidah, verse 2.

The kafalah bil ujrah contract essentially reflects a change in the nature of the kafalah contract, which originally belonged to the domain of tabarru' (charitable/non-profit) contracts but has transformed into a mu'awadhat(compensatory/commercial) contract, as the guarantor (kafil) receives a fee (ujrah) as 'iwadh (compensation) for providing the guarantee. Scholars have permitted the kafalah bil ujrah contract based on the following reasons:[47]

1. The emergence of two contradictory situations: on one hand, the guarantor (kafil) is willing to provide the guarantee on the condition that they are entitled to receive a fee (ujrah) for the service of the kafalah. On the other hand, the principal (ashil) fails to find a guarantor who does not require a fee, even though they are in great need of the kafalah. Thus, scholars permit the fee for the kafalah service if the kafil imposes the condition and the ashil cannot find a guarantor who does not require a fee, even though they need the guarantee. The permissibility of kafalah bil ujrah arises due to the genuine

[47] Jaih Mubarok dan Hasanudin, *Fikih Mu'amalah Maliyyah; Akad Tabarru'* (Bandung: Simbiosa, 2017).

need (al-hajjah/al-dharurah) and to eliminate harm (daf' al-dharar).

2. Qiyas (analogy), which is the permissibility of receiving a fee (ujrah) for religious services that fall under the domain of worship. For example, the permissibility of ujrah for teaching the Quran and other religious sciences; ujrah for delivering sermons as a dai (preacher); ujrah for performing the Friday sermon and leading the Friday prayer; the Eid al-Fitr and Eid al-Adha prayers; and ujrah for mosque maintenance services (ta'mir).

Muhammad Musthafa Abuhu al-Syinqithi, in his book al-Dirâsah al-Syar'iyyah li Ahamm al-'Uqûd al-Mâliyyah al-Mustahdatsah, explains the scholars' opinions on the ruling of the kafalah bil ujrah contract as follows:[48]

1. The majority (jumhur) of scholars hold the opinion that an agreement regarding a fee (ujrah) for the kafalah service or a reward (ju'l) for the kafalah service constitutes riba (interest), specifically riba qardh. Therefore, it is considered haram (prohibited).
2. In the book al-Mausu'ah al-'Ilmiyyah li al-Bunuk al-Islamiyyah, the opinion of several scholars is presented, allowing a fee (ujrah) or reward (ju'l) for guarantee services, similar to the permissibility of taking a fee for religious services (tabarru' or acts of worship).
3. In the book al-Bunuk al-Laribawiyyah fi al-Islam by Baqir Shadr, the reasoning behind the permissibility of taking a fee (ujrah) or reward (ju'l) for kafalah services is explained. The ujrah is accepted as compensation for providing the guarantee as well as for the risk undertaken.

According to the National Sharia Council-Indonesian Ulema Council (DSN-MUI), as a collective ijtihad institution, it is permissible for the guarantor (kafil) in a kafalah contract to receive compensation (ujrah) for the guarantee provided to the guaranteed party (makful). This is affirmed in DSN-MUI Fatwa Number: 11/DSN-MUI/IV/2000 on Kafalah, which states that in a kafalah contract, the guarantor may

[48] Muhammad Musthafa Abuhu Al-Syinqithi, *Al-Dirâsah Al-Syar'iyyah Li Ahamm Al-'Uqûd Al-Mâliyyah Al-Mustahdatsah* (KSA: Maktabah al-'Ulum wa al-Hikam, 2001).

receive compensation (ujrah/fee) as long as it does not impose a burden. In DSN-MUI Fatwa Number 57 of 2007 on Letter of Credit with Kafalah Bil Ujrah Contract, it is also stipulated that the L/C Kafalah Bil Ujrah Contract is a guarantee provided by a Sharia Financial Institution (LKS) for export-import trade transactions carried out by customers based on a kafalah contract, and for this guarantee service, the LKS receives a fee (ujrah). The fee or ujrah for kafalah contract transactions must be agreed upon and included in the contract. The same is affirmed in Fatwa Number 74/DSN-MUI/I/2009 on Sharia Guarantees, which among other things, stipulates that the contract that can be used in Sharia guarantees is the kafalah bil ujrah contract, with the condition that the object guaranteed may cover all or part of the payment obligation (dayn) arising from a Sharia transaction and other matters that can be guaranteed based on Sharia principles. The amount of the fee must be determined in the contract by mutual agreement. The kafalah bil ujrah contract is binding and cannot be unilaterally canceled.

The legal opinion and perspective of the National Sharia Council-Indonesian Ulema Council (DSN-MUI) regarding the permissibility of a fee (ujrah) for guarantee services based on the kafalah contract is founded on the views of scholars who allow ujrah in kafalah contracts. In its fatwa considerations, DSN-MUI refers to the opinion of scholars from the Shafi'i school, which permits the collection of fees for providing guarantees. Furthermore, dhaman (kafalah) with compensation, as explained by Musthafa al-Hamsyari, is based on compensation for jah (dignity, prestige), which according to the Shafi'i school, is permissible (jawaz), although some other opinions consider it prohibited (haram) or disliked (makruh). Musthafa al-Hamsyari also bases dhaman (kafalah) with compensation on the ju'alah, which is permitted by the Shafi'i school.

When linked to the opinions of scholars who permit the kafalah bil ujrah contract, as the writer has explained above, along with the various arguments used as legal justifications, it appears that the National Sharia Council-Indonesian Ulema Council (DSN-MUI) agrees and aligns with the opinion that permits the kafalah bil ujrah contract. Although this opinion is not held by the majority of Islamic jurists but only by a portion of scholars, it is nonetheless more relevant to be applied in the context of contemporary transactions.

The method of legal determination employed by the DSN-MUI in issuing the kafalah bil ujrah fatwa is based on the theory of review or i'adah al-nadzhar. The concept of i'adah al-nadzhar, or review, is a concept introduced in the science of usul al-fiqh (Islamic legal theory). Critics of usul al-fiqh have proposed several approaches to enrich the horizon of perspectives, allowing for more thoroughly tested legal conclusions, both in terms of instibtah (theoretical ijtihad) and its application (ijtihad tatbiqi). The concept of i'adah al-nadzhar is part of the renewal of Islamic legal methodology (tajdid usul al-fiqh al-Islami).

The DSN-MUI Fatwa Number: 11/DSN-MUI/IV/2000 on Kafalah, the DSN-MUI Fatwa Number 57 of 2007 on Letter of Credit with Kafalah Bil Ujrah Contract, and Fatwa Number 74/DSN-MUI/I/2009 on Sharia Guarantees, which substantively allow the kafalah bil ujrah contract, represent a form of innovative ijtihad that considers social contracts and the principle of maslahah (public benefit). In the implementation of i'adah al-nadzhar (review), scholars argue that performing ijtihad requires the application of social science and psychology approaches, as legal products are used to regulate human life, both individually and socially, in relation to beliefs, attitudes, and actions.[49]

I'adah al-nadzhar refers to the re-examination or review of previous scholars' opinions when those opinions are difficult to apply and implement. In the context of the kafalah bil ujrah contract, the DSN-MUI conducted i'adah al-nadzhar (review) on the opinions of earlier scholars regarding the permissibility of taking a fee for guarantee services (kafalah). In this case, the DSN-MUI adopted the opinion that allows it, even though this view is not held by the majority of Islamic jurists and is considered a weaker opinion (marjuh). However, this opinion is deemed more relevant for application in contemporary muamalah (transactions) and has the benefit of serving the greater public good (maslahah).

Reconsidering an opinion that is deemed weak (marjuh) and making it a valid guiding principle (mu'tamad) is a breakthrough effort in addressing the stagnation of Islamic jurisprudence in the economic sector, which has long been in a state of inertia amidst the dominance

[49] Washfi 'Asyur Abu Zaid, *al-Muhâwalât al-Tajdîiyyah al-Mu'âhirah Fî Uhsûl al-Fiqh: Dirâsah Tahlîliyyah*, Mesir: Shaut al-Qalam al-'Arabi, 2009, hlm. 64-89.

of conventional economics. The application of the i'adah al-nadzhar theory, or re-examination, serves as a legal solution (makharij fiqhiyyah) aimed at realizing the maslahah (benefit) of Sharia in business transactions. This is because, in essence, the concept of re-examination involves abandoning old opinions and replacing them with new decisions due to ta'asur or ta'adzur—difficulties in implementing the old opinion. One example of this is in activities requiring guarantees accompanied by a fee (kafalah bil ujrah). Essentially, even though the kafalah contract falls within the domain of tabarru' contracts, where the guarantor (kafil) is not entitled to receive a fee (ujrah), the DSN-MUI, considering i'adah al-nadzhar, permits the kafalah bil ujrah contract. This is based on the reasoning that the ujrah is granted for the jah (dignity/reputation) of the guarantor.

Conclusion

The concept of i'adah al-nadzhar is a re-examination of scholars' opinions when the majority view does not provide a solution to real-life situations that require legal clarity from a Sharia perspective, particularly in matters of muamalah maliyyah (financial transactions). In such cases, a view that is considered weak (marjuh) may be chosen if it can be applied effectively. This concept serves as a legal solution (makharaj fiqhiyyah) employed by DSN-MUI, as seen in the fatwa regarding the permissibility of the kafalah bil ujrah contract. Although kafalah contracts fall under the category of tabarru' contracts, where the guarantor (kafil) is not entitled to a fee (ujrah) as per the majority opinion of Islamic jurists, DSN-MUI, by considering i'adah al-nadzhar, permits the kafalah bil ujrah contract. This is based on the reasoning that the ujrah is granted for the jah (dignity/reputation) of the guarantor, as well as due to the presence of hajjah (necessity) and the need to avoid harm (daf' al-dharar).

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