



**al-Ihkam:** Jurnal Hukum dan Pranata Sosial, 14 (1), 2019: 72-98  
ISSN: 1907-591X, E-ISSN: 2442-3084  
DOI: <http://doi.org/10.19105/al-ihkam.v14i1.1893>

## **The Transformation of *Ijârah*: From *Fiqh* to Sharia Banking Products**

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Article history: Received: 26 September 2018, Accepted: 27 Juni 2019, Published: 11 Juli 2019

### **Abstract:**

*Ijârah* begins from the concept of classical *fiqh* as a transaction that sustains the development of Islamic banking. The wide range of banking products produced from the concept of *ijarah* is the basis for developing the concept of jurisprudence from classical *fiqh* contact to banking products in the form of financing. These developments can be seen from a large number of banking products that use *ijârah* contracts, especially those related to services. This development lies in the merger of *ijârah* contracts with several other contracts such as *wakâlah*. Another development that exists in the path to *ijarah* financing is seen from the foundation. In classical *fiqh* concept, *ijârah* is a product of *fiqh ijtihâd* which is *zanni* or not binding. Every Muslim may practice the concept of jurisprudence from many scholars as *ijtihâd*. However, in the financing of the surcharge, it is a combination of several contracts and is based on the DSN-MUI fatwa which is more binding for Islamic financial institutions on the recommendation of the Islamic banking law.

### **Keywords:**

*Ijârah* Financing; Transformation; Sharia Banking; *Fiqh*

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**Abstrak:**

*Ijârah* yang berawal dari konsep fikih klasik merupakan salah satu transaksi yang menopang perkembangan perbankan syariah. Luasnya cakupan produk perbankan yang dihasilkan dari konsep *ijarah* menjadi dasar bagi pengembangan konsep *ijârah* dari kontak fikih klasik menuju produk perbankan dalam bentuk pembiayaan. Perkembangan tersebut dapat dilihat dari banyaknya produk perbankan yang menggunakan akad *ijârah* terutama yang berkaitan dengan jasa. Perkembangan tersebut terletak dari penggabungan kontrak *ijârah* dengan beberapa kontrak yang lain seperti *wakalah*. Perkembangan lain yang ada pada *ijârah* ke pembiayaan *ijarah* adalah dilihat dari dasar pijakan. Dalam konsep fikih klasik, *ijârah* merupakan produk ijtihad fikih yang bersifat *dzanni* tidak mengikat. Setiap orang Islam boleh mengamalkan konsep *ijârah* dari ulama manapun yang bersifat ijtihad. Namun dalam pembiayaan *ijârah* selain merupakan gabungan dari beberapa akad dan berpijak pada fatwa DSN-MUI yang lebih mengikat bagi lembaga keuangan syariah atas anjuran dari undang-undang perbankan syariah.

**Kata Kunci:**

Pembiayaan *Ijârah*; Transformasi; Perbankan Syariah; Fikih

**Introduction**

The development of knowledge and technology has brought positive impacts for the advancement of the world's economy. This is proven by the development of various services provided by financial institutions, either banks or non-banks. Equally matching the conventional ones, sharia banks have also developed the services and products they provide, keeping in track with what the needs of people who have longed for the sharia-based economy.

As a quite mature financial institution,<sup>1</sup> banks have successfully attracted people's sympathy and taken control of the financial institution market as compared to other financial institutions. From

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<sup>1</sup> The banking business firstly began only from Babylonia era and it continued to the ancient Greek and Roman era. However, at that time, the main task of banks was just as a place to exchange money. The well-known banks in European era eventually spread to Asia. Among these famous banks in Europe continent was Bank of Venice in 1171. Kasmir, *Bank dan Lembaga Keuangan Lainnya* (Jakarta: Raja Grafindo Persada, 2014), 28.

this fact, it is fair to say that banking financial institutions have grown and played an active role in running the people's finance-based activities in both Islam and non-Islam worlds.<sup>2</sup>

Judging from the development of financial institutions in the world, it can be seen that the financial institutions' products circulating in the community are those *ribâ*- or usury-based ones in the perspective of most (*jumhûr*) *fuqahâ*.<sup>3</sup> Considering the currently developing phenomenon, Islam followers or Muslims begin to realize the importance of returning to an economic model which is distant from the usury-based principles. The suffocating usury trap has been the trigger for a financial institution expected to keep themselves away from usurious practices in both bank and non-bank financial institution forms such as *Baitul Mal wat Tamwil* (BMT). Using Law No. 10 Year 1998 and strengthened with the issuance of Law No. 21 Year 2008 as its bases, sharia banking has had a robust existence in Indonesia. Bank Muamalat Indonesia (BMI) as the pioneer of sharia banking presence in Indonesia has served the role of promoting the conventional banks to establish a sharia branch called *assharia* business unit.<sup>4</sup>

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<sup>2</sup> This can surely be seen from the rapid banking growth, be it private or state-owned banks.

<sup>3</sup> *Jumhûr fuqahâ'* forbids bank interest. This prohibition has something to do with the moral value in it which contains an injustice element. Nevertheless, a Syrian politician, Doualibi, distinguishes productive-and consumptive-based interests. He suggests that an interest of financing for consumptive purpose is *haram* (forbidden) and the one of productive-based financing is *halâl* (allowed). This opinion is based on verses in al-Quran related to the prohibition of *ribâ*. He said that the verses which forbid *riba* were revealed in the context of releasing the poor from suffering. See Absullah Saeed, *Menyoal Bank Syariah*, translation: Arif Maftuhin (Jakarta: Paramadina, 1996), 60-65. Also see Ummi Kulsum, "Riba dan Bunga Bank dalam Islam (Analisis Hukum dan Dampaknya Terhadap Perekonomian Umat), *Jurnal Al-'Adl*, Vol. 7 No. 2 Juli 2014, 67-83.

<sup>4</sup> As the first sharia banking institution as well as its pioneer in Indonesia, BMI received a support from the government of Indonesia. This bank whose slogan is *pertama murni syariah* (the first purely sharia) can compete with various products offered by conventional banks. Meanwhile, Bank Rakyat Indonesia Syariah itself was initially a branch of Bank Rakyat Indonesia established on November 17, 2008. See admin, "tentang muamalat" at <http://www.bankmuamalat.co.id/profil-bank-muamalat>, accessed 17 April 2018. Also see admin, "sejarah BRI Syariah" at <https://www.brisyariah.co.id/accessed> 17 April 2018.

One of state-owned Sharia banking institutions is BRI Syariah. BRI Syariah was initially a sharia business unit which eventually parted ways with Bank Rakyat Indonesia (BRI) and became an independent bank on December 19, 2008 and effectively operated as of January 1, 2009. It was from this separation that BRI Syariah became an independent bank and was expected to be an independent and developed sharia bank. In running its business, BRI Syariah has various *ijârah*-based products to offer. Several sharia products that BRI Syariah has to rely on include *Kepemilikan Multifaedah PURNA* (KMF Purna BRISyariah iB) or Multi-purpose Ownership PURNA, *Kepemilikan Multifaedah PRAPURNA* (KPM Pra PURNA BRISyariah iB) or Multi-purpose Ownership PRAPURNA, and *Financing Kepemilikan Multifaedah* or Multi-purpose Ownership Financing, all of which have their roots from *ijârah* financing products.<sup>5</sup>

Not too much different from BRI Syariah, BNI Syariah as a bank which obtained its permit to operate on June 19 2010 and referred to as Bank Umum Syariah (BUS) had officially been operating. This bank whose mission is "To be a people's choice sharia bank people with superior service and performance" has undergone rapid development. BNI Syariah also has their featured products as *ijârah*-based financing products. One of these various products is iB Hasanah multi-purpose financing.<sup>6</sup>

Unlike productive banking products such as *mudlârabah*, *ijârah* financing is a product to transfer the right of use or benefit of a goods or service based on *ijârah* transaction. The issuance of *Dewan Syariah Nasional Majelis Ulama Indonesia* (DSN-MUI) or National Sharia Board of Indonesia Ulema Council's verdict no: 09/DSN-MUI/IV/2000 has

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<sup>5</sup> In essence, *ijârah* financing is a modification to a lease payment method paid in advance. In this case, the bank serves as the goods owner and the customers serve as the lessee. However, in this financing, the customers pay in installment to the bank for the lease financing paid by the bank in advance. Ascarya, *Akad & Produk Bank Syariah* (Jakarta: Raja Grafindo Persada, 2011), p 223-224. Also see Harun Santoso and Anik, "Analisis Financing Ijarah pada Perbankan Syariah", *Jurnal Ilmu Ekonomi Islam*, Vo. 1 No. 2 Juli 2015, 106-116.

<sup>6</sup> Admin, "Profil BNI Syariah" at <https://www.bnisyariah.co.id/id-id/> accessed 19 April 2018.

served as a robust basis for sharia banks in implementing their *ijârah* products in the form of financing.<sup>7</sup>

*Ijârah* itself comes from *الأجرة* which means fee for a job. Terminologically, *ijârah* means: a covenant of ownership of a good benefit in return for a reward.<sup>9</sup> Thus, there are at least four things which serve as the pillars or *rukun* for this *ijârah* deed to manifest. They are the lessee, the lessor, the goods or benefit of goods serving as the lease object, and a covenant or *akad*.<sup>10</sup> Zakariyâ al-Anshârî added fee as another *ijârah* pillar.<sup>11</sup> In fiqh perspective, these five *ijârah* covenant pillars should be fulfilled to gain the 'validity' in making this transaction. Meanwhile, *ijârah* financing is in principle consumptive financing where a bank will finance the customers for their consumptive needs and impose the payment to the customer with an additional profit margin for the bank or the financial institution.<sup>12</sup>

Judging from the mechanism above, the banks or financial institutions only provide fund and it is given directly to the customers with an additional profit margin for the banks. From this definition, it is obvious that basically, this *ijârah* financing is just another term of debt with additional profit and such a transaction is clearly classified as *riba*. Additionally, the fee as a pillar of *ijârah* payable by the service users is also not found in this contract and what is more visible is the provision of the fund with profit. In addition, judging from its context, the *ijârah* financing product in sharia banks derives from the

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<sup>7</sup> The services which can be used through *ijârah* financing scheme are usually those of consumptive nature yet not in an aspect which can be traded, such as medication fee in hospitals, nursing fee, tuition fee etc. However, *Ijarah* financing can also be applied to an *Ijarah* Contract which ends up with a purchase under an *al-ijârah al-muntahiyah bi al-tamlîk* covenant.

<sup>8</sup> Abû al-'Abbâs, Aḥmad ibn Muhammad ibn 'Alî al-Fayyûmî, *al-Mishbâh al-Munîr fi Gharîb al-Syarh al-Kabîr* (Beirut: al-Maktabah al-'Ilmiyyah, s.a.), 5.

<sup>9</sup> Kementrian Wakaf dan Urusan keislaman Negara Kuwait, *al-Mawsu'ah al-Fiqhiyah al-Kuwaitiyah*. (Kuwait: Dar al-Salasil) Vol. 1 352.

<sup>10</sup> *Ibid.* Vol. 1 354, Also see Mahkamah Agung RI, Pusdiklat Teknis Peradilan, *Kompilasi Hukum Ekonomi Syariah*, 2009, 65.

<sup>11</sup> Zakariyâ al-Anshârî. *Fath al-Wahhâb bi al-Syarh al-Manhâj*, Vol. 1 (Semarang: Karya Toha Putra, s.a), 246.

<sup>12</sup> Ascarya, *Akad & Produk Bank Syariah* (Jakarta Utara: Raja Grafindo Persada, 2011), 223-224

*ijârah* contract as specified in fiqh concept. Nevertheless, from the mechanism of how it is implemented in sharia banks, there is a significant modification in it. The modification can be seen from the role played by the sharia banks as the service providers which merely provide an amount of fund to their customers, rather than contributing directly to providing the said service. The customers then use the fund provided by the sharia banks along with predetermined *ujrah* to pay the service. This transformation eventually poses a big question for the society regarding the contract legality status as seen from *fiqh muamalah*.

Based on this introduction, the writer is interested in a further study on the covenant of *ijârah* financing in sharia financial institutions. The questions to be answered include: (1) how is transformation process of *ijârah* contract in *fiqh* concept into the financing contract in the said sharia banks, and (2) Does this process comply with the rules of Islamic law or does it deviate from the rules where the *ijârah* financing which supposedly serves as a solution yet it turns into a boomerang for the users of this service.

### **Research Method**

This research used qualitative approach by investigating the practice of *ijârah* financing in Sharia Banks, particularly BRI Syariah Purwokerto, Banyumas, Central Java which was used to provide a real picture of financing practices in banks. Interviews were made with the bank manager, legal and marketing staff. The data obtained from the bank were compared against the verdicts issued by the National Sharia Board of Indonesia Ulema Council (DSN-MUI) and Law No. 21 Year 2008 concerning Sharia Banking for finding the meeting points between these rules, verdicts and the practices implemented. Additionally, the *ijârah* concept in classical fiqh was also consulted with in order to figure out its transformation from classical fiqh to a banking product.

The data in this research were analyzed after all variables which should be available from the fiqh concept, sharia banking law, verdicts from DSN-MUI and the data from interview with the sharia bank obtained. These data were then analyzed according to their respective positions for withdrawing conclusions.

### Islamic Law and Social Change

Islamic Law itself can be called as *sharia* Islam (*al-Syarī'ah al-Islāmiyyah*) or *fiqh* Islam (*al-Fiqh al-Islāmī*). The term *al-Syarī'ah* terminologically derives from the word “*Syara'a, yasyra'u, syar'an wa syuru'an, syariat*an”.<sup>13</sup>

The word *al-Syarī'ah* itself has been absorbed into Indonesian language and becomes *syariat*.<sup>14</sup> Etymologically speaking, *sharia* contains two meanings. *Firstly*, it means the flowing water which can be used for the drink. The use of *sharia* in this sense is in line with the expression “*syara'tu al-ibil idza waradat syari'at al-ma'* (I give the camel water when it comes to the water container).<sup>15</sup> The *second* meaning is the straight and clear way (*al-thâriqal-mustaqim wa al-wadlih*) as mentioned in Q.S al-Jâtsiyah 45: 18.<sup>16</sup>

Meanwhile, from the terminology perspective, *sharia* was anything revealed to the messenger Muhammad *Rasulullah* in the form of revelations, be it written in al-Quran and the hadith uttered by *Rasulullah* to his companions and believed as valid.<sup>17</sup> The *fuqaha* define *sharia* even in narrower sense. In their opinion, *sharia* is any command related to human behaviors other than behavior or characters. This way, *sharia* is another name of Allah's laws of *amaliyah* (practical) nature which have nothing to do with *akhlak*.<sup>18</sup>

Meanwhile, the term *fiqh* is tightly related to the term *sharia*. *Fiqh* itself occupies the practical definition of *sharia*. The word *fiqh* comes from the word “*faqih*a-yafqahu-faqihan” which means to understand or comprehend deeply.<sup>19</sup> Judging from its terminology,

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<sup>13</sup> Muḥammad Idris Abd al-Rauf al-Marâbî, *Qâmûs al-Marbawî* (Mesir: Mushthafâ al-Bâbi al-Halabi wa Awladuh, 1350),318.

<sup>14</sup> Departemen Pendidikan Nasional, “*Kamus Bahasa Indonesia*” (Jakarta: Pusat Bahasa, 2008), 1402.

<sup>15</sup> Muhammad Ali Jum'ah, *al-Madkhal ilâ Dirasat al-Mazâhib al-Fiqhiyyah* (Kairo: Dâr al-Salam, 2004), 305.

<sup>16</sup> Aḥmad Ali Ilyan, *Târikh al-Tasyrî' wa al-Fiqh al-Islâmî* (Riyadl: Dâr Ishbili, 2001), 11. Also see Abdul Wahab Abd. Muhaimin, “Aktualisasi Syariah dan Fikih dalam Menyelesaikan Pelbagai Persoalan Hukum”, *Ahkam*, Vol. XV, No. 2 Juli 2015, 241-248.

<sup>17</sup> Amir Syarifuddin, *Ushul Fikih I* (Jakarta: Kencana, 2011), 1.

<sup>18</sup>*Ibid.*, 2.

<sup>19</sup> Abu al-Fadl Muḥammad ibn Mukrim ibn 'Ali Ibn Manzur, *Lisan al-'Arab* (Beirût: Dâr Sadir, 1414 H.), XIII: 522.

the word *fiqh* means the science related to sharia laws of *amaliyah* nature, taken from detailed propositions.<sup>20</sup>

While the term Islamic Law can be used in both sharia Islam and *fiqh* senses, though they are fundamentally different. The difference between the two can be seen from their initial uses. In essence, sharia comes from the *Khâlik* or Creator Allah and the messenger Rasulullah (*al-Syâri*). Meanwhile, *fiqh* itself is one of sharia products formulated by Islamic law experts commonly known as *mujtahid*, or *fuqaha*. Thus, it is clear that sharia is the Islamic law which will always be applicable forever, and *fiqh* is the concrete formulation of Islamic law to make it practicable to a certain case, in a certain place, under a certain circumstance and at a certain time. They can be distinguished yet cannot be separated. It is important to note this as an attempt to re-emphasize the meaning of Islamic law itself, to prevent any ambiguity between the two, both as a teaching of a permanent nature and as a result of interpretation by classical *mujtahid* which is still debatable.

Based on the explanation above, it can be concluded that in Islamic law, there are two important elements, namely the *tsubût* or permanent legal element which will neither change nor be subjected to any change, and the *tathawwur* (dynamic and developing) which can change to keep up with certain time, condition and place where the law is implemented. The *tsubût* or permanent legal element means that it is impossible for it to change or to accept any change or update. This permanent legal element is usually explained in al-Quran or Hadith explicitly and detailed to which no further interpretation is needed. Such a legal element is beyond the area of *ijtihad*. This *tsubût* or permanent Islamic law must not change. This is because if this permanent law to undergo a change, imbalance and damage will occur to human life. Furthermore, this legal element usually deals with primary or *daruriyyah* needs. On this basis, *mujtahid* have formulated a *fiqh* rule *la ijtahada ma'a nashsh*, meaning it is not allowed to make *ijtihad* or no *ijtihad* shall be made on cases which

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<sup>20</sup> Abd Allah ibn Yusuf ibn 'Isa, *Taysir Ilm Usul al-Fiqh* (Beirut: Muassasah al-Risalah, 1997), 11.



have been *manshush* (problems which have *nash*).<sup>21</sup> Therefore, *ijtihad* cannot be made to problems whose rules have been explicitly established by definitive propositions (*qath'i*) *al-wurud waal-dalalah*.

Meanwhile, the legal provisions of *tathawwur* (dynamic and developing) nature can be classified into two, namely; *firstly*, the laws withdrawn from propositions of speculative or *zhanni* nature which is still possible to change according to the time and place. *Secondly*, the laws extracted through *ijtihad* as a result of the current development which surrounds a certain case.<sup>22</sup>

As suggested by *mujtahid* through an *ushul fiqh* rule, *ijtihad* can only be made in certain areas; *firstly*, the propositions come with definitive (*qath'i*) *al-wurud* yet its *dalalah* is *zhanni*- (speculative); *secondly*, the propositions are speculative (*zhanni*) *al-wurud* yet its *al-dalalah* is definitive (*qath'i*); *thirdly*, the propositions with speculative (*zhanni*) *al-wurud* and *dalalah*; and, *forthly*, to cases which have no legal propositions.

The understanding of *fuqaha* to the elasticity of Islamic law as a result of changes in era, condition and place accords to a number of legal experts, such as: *Linant de Ballefonds* and majority of reformers as well as contemporary Islamic law scholars that Islamic laws can undergo changes as a consideration of various aspects, including the aspect of *maslahah* or benefits. The matching and elasticity of Islamic laws in practice from time to time indicate that social changes can result in a change to the previously implemented Islamic laws. Islamic laws have a characteristic of being capable of adjusting itself and being dynamic based on the applicable development of time, condition and place. Thus, if no attempt to change and reform is made to Islamic laws, people will then find it difficult to implement them in the future.<sup>23</sup>

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<sup>21</sup> Fathurrahman Azhari, "Dinamika perubahan Sosial dan Hukum Islam". Dalam *Jurnal al-Tahrir* Vol. 16. No. 1 Mei 2016. 197-221. Also see Moh. Mufid, "Qath'i dan Zanni dalam Pemikiran Islam (Memahami Teks dan Konteks Secara Proporsional)", *Jurnal Al-Hikmah* Vol. XV, No. 2, 2014, 232-250.

<sup>22</sup>*Ibid.*

<sup>23</sup>*Ibid.* Also see Iswahyudi, "Majelis Ulama Indonesia dan Nalar Fatwa-fatwa Ekstrem", *Al-Ihkam*, Vol. 11 No. 2 Desember 2016.

The goodness of human life is the main goal for the establishment of Islamic laws.<sup>24</sup> Thus, the existence of Islamic laws should be a solution and guideline for human life. This can take form of Islamic law establishment as an answer to a problem or conflict arising out in the community or as a guideline in the form of regulations to support the life. Based on this, Islamic laws are constantly demanded to be able to give a solution to problems within a community according to the changes in social life. Therefore, it is highly urgent to reactualize Islamic laws.

The process of change on Islamic laws from a time to another (classical era to contemporary one) has been suggested by *qawâid fiqhiyyah* as established by *fuqaha: la yunkar taghayyural-ahkâm bi taghayyur al-azmân*<sup>25</sup> (It is undeniable that Islamic laws can change as a result of changes in time). Even Ibn Qayyim al-Jawzzyiah made a *fiqh* rule which read: *تغيّر الفتوى، واختلافها بحسب تغيّر الأزمنة والأمكنة والأحوال والنيات والعوائد* (Verdict might change as the time, place, circumstance, intention and custom change).

### Social Changes and Islamic Laws

Interaction is the word deemed appropriate to describe the relationship between laws and social changes. In other words, the social change in the community has some impact on the changes in laws and vice versa, i.e. changes in laws significantly affect the change in the community. It is important to note that, in the social system order, the social life and laws as its subsystems respectively go according to their function. Yet, as a system, both have relatedness and dependence. Thus, the social changes occurring in the community will have some influence or bring about a change in laws and vice versa, any change to the laws will result in social changes.

These relationship and interrelatedness between social life and laws match Talcott Parsons's cybernetics theory. This theory suggests that a social system is an interaction between interrelated social subsystems. Thus these subsystems have their own dependence and relatedness. The behavior or action of each individual or a social

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<sup>24</sup> Amir Syarifuddin, *Ushul Fiqh I*, 231.

<sup>25</sup>*Ibid.*

action of personal nature is not a biological behavior, yet it should be viewed from a structured behavior. This behavior of personal nature should be put more widely as divided into subsystems.<sup>26</sup>

Just like other laws, Islamic laws can also change the society, provided that they have been implemented and complied with and become the custom for the society. Additionally, Islamic laws can also change the community's social life if they have been absorbed into positive laws and enacted. In many historical studies related to laws, it has been clear that the existing and applicable laws can change the community's social life. During the classical era, for example, Rasulullah in addition to being a head of state, he was also a role model in practicing the religion. Thus, what Rasulullah said as the head of state became rules for the activities of all Muslims.

Abu al-Hasan al-Nadwi had described the social life of ancient Arab society or *Arab jahiliyah* with value degradation within themselves. This degradation was pictured by their indulgence in gambling, drinking liquor, and doing brutal actions such as burying female infants alive and putting women in the lowest degree. Meanwhile, their men were entitled to and freed to wed and marry many women with no clear limitation. The ego and interest of tribes became something they had to maintain at whatever cost. As a result, the blood was frequently shed between them, and some even took that as a pride. For nearly 23 years, the sharia brought by Rasulullah PBUH to govern the order of life of *Arab Jahiliyah* both as an individual and a group and related to (noble) characters or *akhlak*, creeds (*aqidah*) and worship (*ibadah*) had succeeded in changing the behavior of Arab people who used to be *jahiliyah* (ignorant) into the one which complied with the laws taught by Rasulullah.<sup>27</sup>

The same happened during the era of *Khulafâ' al-Râsyidîn* as the successors of the Prophet Muhammad PBUH, in which they succeeded in changing the social order of people at that time. The reign of Umar ibn al-Khaththâb could serve as a good example. When he was in charge, many people played the *talaq* (divorce) enunciation and even

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<sup>26</sup> Munir Fuady, *Sosiologi Hukum Kontemporer Interaksi Hukum, Kekuasaan, dan Masyarakat* (Bandung: Citra Aditya, 2007), 61.

<sup>27</sup> Fathurrahman Azhari, "Dinamika perubahan Sosial dan Hukum Islam". *Jurnal al-Tahrir* Vol. 16. No. 1 Mei 2016. 197-221.

passed the triple *talaq* at once. In response to such a social circumstance, Umar ibn al-Khaththâb then took legal action by making *ijtihad* and established that triple *talaq* at once should mean the passing of three *talaqs* as well. This statement was made as a response to the random use of *talaq* in the community at that time. Thus, in Umar ibn al-Khaththâb's opinion, such a social habit should be prevented by establishing the rule that triple *talaq* should mean the passing of three *talaqs* as well. The issuance of Umar ibn al-Khaththâb's verdict brought a positive impact as indicated by the discouragement of many men to enounce multiple *talaq* or even triple *talaq* at once to their wives.<sup>28</sup>

Based on the legal system followed, countries are divided into two, Islam and non-Islam countries. Islam countries mean those implementing Islamic laws in administering their countries in which Islamic laws will govern anything related to behavior, position, and structures as what happens in Saudi Arabia and other Islam countries. Meanwhile, in non-Islam countries, Islamic laws do not suddenly change the social order of people in them.

In a non-Islam country, Islamic laws can actually change the social order of its people, provided that these laws are enacted or absorbed into positive laws like the case of, for example, Indonesia. One of Islamic laws absorbed into positive laws is Law No. 1 Year 1974 concerning Marriage. Prior to the issuance of this Law No. 1 Year 1974, many Indonesians were married underage. Later, upon the issuance of this Law, particularly as specified in chapter 2 article 7, which read "marriage is allowed only when the bridegroom has been 19 years old and the bride has been 16 years old," the social order of people in Indonesia changed. People were forced to comply with the law on marriage or wedding. Also prior to the issuance of Law No. 1 Year 1974, some people in Indonesia easily enounced divorce or *talaq* to their wives, and these wives had unequal position with their husbands in their households. However, after Law No.1 Year 1974 was enacted, a divorce was no longer deemed as a valid one unless it was enounced before a court. Additionally, wives were also entitled to sue for divorce against their husbands when violations were made to the Law No. 1 Year 1974 in their households. To strengthen and reinforce the position of this Law No. 1 Year 1974 concerning Marriage, an

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<sup>28</sup>*Ibid.*

Islamic Law Compilation or Kompilasi Hukum Islam (thus KHI) was prepared to govern the social life of a community in regard to marriage. Another change also occurred in the economic field where the issuance of Law No. 21 Year 2008 brought a social change in *mu`âmalah* field. The provisions for running business in sharia banking field were governed in this law.

Concerning with this, William Dahl suggested that law was the main instrument of social engineering which was eventually used as the basis for the formation of a prosperous society. This is because the various rules which were created and implemented were actually addressed for the creation of order and balance in the society's life. Therefore, the law could create changes to social life and order of the society or at least could trigger social changes to the society.

Based on the function of law theory as used above, the law can change the social order of community. When the law deals with social change occurring in the community, it will occupy one of two functions. *Firstly*, it can serve as a social control instrument. In this case, the law is deemed as a reference or even a means to create and maintain the community's social stability. *Secondly*, it can also function as *wasilah* or means to change the community. This way, the law and apparatus within it play a highly important role to bring a social change towards a new unprecedented social order to the community.<sup>29</sup>

### **Social Change Leading to Islamic Law Change**

*Nashsh* from al-Quran and Hadith are highly limited, yet the social problems keep on developing and new cases keep on occurring. This social change can be in the form of changes in socio-cultural and socio-economic orders or other changes related to the social life of the community. Therefore, Islamic laws with the limited religious texts should be capable of responding to the social changes occurring and developing in the community.

Social changes do demand changes in the law. Soekanto suggested that the interaction between social change and law change

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<sup>29</sup> GibtiahYusida Fitriat, "Perubahan Sosial dan Pembaruan Hukum Islam Perspektif Sadd al-Dzari'ah", *Jurnal Nurani*, Vol. 15 No. 2, Desember 2015, 108-109.

is real and possible.<sup>30</sup> The social change occurring in the community can trigger the development of Islamic laws which suit the development of the community.<sup>31</sup> An example of how a change in the law is affected by a social change is the public whipping punishment for those who drink liquor. Rasulullah punished those who drank liquor by whipping them 40 times. However, this changed during the reign of Umar ibn al-Khaththâb ra. He decided to pass an 80-time whipping punishment for those who drank liquor and it was supported by the full agreement from the companions and thus it became an *ijmâ'*.<sup>32</sup> The decision made by `Umar was different from what Rasulullah did. In this case, it was obvious that Umar ibn al-Khaththâb had his own reason, i.e. the trend for the community at that time where they began to take the implemented laws lightly. This phenomenon demanded a new law which made the community more compliant with the rules applicable in the society.

Another example can be seen in varied responses from *fuqaha* in determining the law based on the social changes occurring during their time. One of the concrete evidence recorded in the history of *mazhab* is the birth of *qawl al-qadîm* and *qawl al-jadîd* of al-Syafi`î. *Qawl al-Qadîm* (old opinions) were those opinions by al-Syafi`î related to the laws when he was in Iraq, and *qawl al-jadîd* or new opinions when he had moved to Egypt. One of the causes for these different opinions was the social change in the communities in Egypt which was different from that in Iraq.<sup>33</sup>

The products of Islamic law explained by classical *mujtahid* are not the absolute ones which do not accept any change. Moreover, as time goes, an Islamic law which was established in the past might be counterproductive and even no longer unsuitable with the current development and in need of review. Therefore, the meeting point between Islamic law and social problems of the community has

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<sup>30</sup> Soerjono Soekanto, *Beberapa Permasalahan dalam Kerangka Pembangunan di Indonesia* (Jakarta: Yayasan Penerbit UI, 1975), 139–40.

<sup>31</sup> Lahmuddin Nasution, *Pembaharuan Hukum Islam dalam Mazhab Syafi'i* (Bandung: PT. Remaja Rosdakarya, 2001), 254.

<sup>32</sup> Muhammad ibn Isma'îl ibn Shalâh ibn Muhammad, *Subûl al-Salâm* (Beirut: Dâr al-Hadîts, s.a.), Vol. II, 444.

<sup>33</sup> Fathurrahman Azhari, "Dinamika perubahan Sosial dan Hukum Islam" *Jurnal al-Tahrir* Vol. 16. No. 1 Mei 2016, 197-221.

always led to re-thinking of the classical Muslim scholars' intellectual works in the past.

The social change of community from classical to contemporary eras surely required the law to change, and Islamic law was not excluded. The banking community, particularly sharia banking is required to comply with the contemporary *muamalah* concept issued by the National Sharia Board of Indonesia Ulama Council or *Dewan Syariah Nasional Majelis Ulama Indonesia* (DSN-MUI). DSN-MUI itself has issued verdicts related to classical covenants which had transformed into sharia banking products. In addition, Indonesian Muslim scholars have also given birth to Sharia Economic Law Compilation or *Kompilasi Hukum Ekonomi Syariah* (KHES), as a reference for sharia banking. Basically, the covenant products in classical *fiqh* and DSN-MUI's verdicts are the same. However, they receive some modifications according to the contemporary needs, particularly the ones in sharia banking field. One example of this is the combination of two covenants in one transaction. In the classical *fiqh* literature, this practice was forbidden and deemed invalid. However, as the social life of community changes, the implementation of two covenants in one transaction becomes inevitable. This triggers the birth of a new covenant referred to as the combined covenant (*al-uqudal-murakkab*).

In the study of Islamic law, the changes in socio-cultural life and geographical location become highly important variables and make some contribution in changing the law. The *mujtahidin* of classical *fiqh* of Islam formulated a *fiqh* rule which read *la yunkaru taghyyur al-ahkâm bi taghayyur al-azmân* (It is undeniable that changes in laws might be influenced by changes in time). Ibn Qayyim al-Jauziyyah stated similarly or even more specifically. He said that the social factors which changed the law could be formulated into four. They include: *firstly*, current situation, *secondly*, place, *thirdly*, condition and wish and *fourthly* customs or tradition. These four factors are summarized in one *fiqh* rule he explained using the following sentence: *تغيّر الفتوى،*

*واختلافها بحسب تغيّر الأزمنة والأمكنة والأحوال والنيات والعوائد* (the change of a verdict -in Islamic law- can be influenced by changes in time, place, condition and customs).

Verdicts are the result of *mujtahid* or *mufti's* contemplation through an *ijtihad* process in relation to social cases or problems of the community asked to them.<sup>34</sup> Verdict itself is dynamic. This is because a verdict is a response to what happens in the community which is new and in need for a solution. Thus, for each new case which is unheard of and no specific verdict is known for it, a verdict needs to be immediately found as answer to that very exact problem. Judging from this explanation, it is obvious that changes in law need to be made. This is because a product of *ijtihad* is always relative in nature. Therefore, the answer to new problems should also be new, provided that it does not contradict al-Quran and Hadith.

### **Ijârah in Classical Fiqh Concept**

*Ijârah* is one of covenant concepts which has long been formulated by initial Muslim scholars. However, as people's needs develop, *ijârah* covenant also undergoes a transformation. In order to understand the transformation of *ijârah* covenant, it is important to first understand the *ijârah* covenant in the classical *fiqh* concept. *Ijârah* comes from the word *al-ajru* (الأجر) which means fee. The word *al-ajru* can also mean divine reward.<sup>35</sup> This definition of *ijârah* linguistically is in line what is suggested by al-Zuhaylî.<sup>36</sup> Meanwhile, terminologically, *ijârah* is a covenant of a goods benefit in exchange of fee.<sup>37</sup> And the covenant of the addressed goods can be utilized and allowed according to sharia with a clear fee.<sup>38</sup>

Amir Sayrifudin suggested that *ijârah* in a simple sense is defined as a transaction of benefit or service with certain reward. If the object of the benefit comes from a tangible goods then it is called *ijârah al-'ain* (rent). This includes house rent to be occupied, building rent for an event or so forth, vehicle rent to be used as a means of transportation. However, if the object of *ijârah* is a service of a

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<sup>34</sup> Abû Adb Allâh Muhammad ibn Abû Bakr ibn Ayûb, *'Ilâm al-Muwaqqi'în 'an Rabb al-'Alamîn* (Riyadl: Dâr ibn al-Jauzî, s.a.), I: 48.

<sup>35</sup> Al-Sayyid Sâbiq, *Fiqh al-Sunnah* (Beirût: Dâr al-Kurub al-'Ilmiyyah, 1977), III/177.

<sup>36</sup> Wahbah al-Zuhaylî, *al-Fiqh al-Islâmi wa Adillatuh* (Beirût: Dâr al-fikr, s.a.), V/3804.

<sup>37</sup> Al-Sayyid Sâbiq, *Fiqh al-Sunnah*, III/177.

<sup>38</sup> Al-Zuhaylî, *al-Fiqh al-Isâmî*, V/3804.



person's work or benefits not in the form of goods, then it is called *ijârah al-zimmah*.<sup>39</sup>

Muslim scholars agree that *ijârah* was allowed, except Abû Bakar al-Asham, Ismâ'il ibn 'Ulaiyah, Hasan al-Bashri, al-Qâsânî, al-Nahrawî, and ibn Kîsan. They argued that *ijârah* is a transaction of a goods' benefit and this benefit was not there when the transaction was made, thus it could not be said as valid according to Islamic law.<sup>40</sup>

The initial Muslim scholars agreed that *ijârah* covenant was allowed. This agreement was based on al-Quran, Hadith and Ijma'. Surah al-Thalâq verse 6.: , فَإِن أَرْضَعْنَ لَكُمْ فَآتُوهُنَّ أُجُورَهُنَّ » , and al-Qashash verses 27-28: «قَالَتْ إِحْدَاهُمَا: يَا أَبْتَ اسْتَأْجِرْهُ، إِن خَيْرٌ مِّنْ اسْتَأْجَرْتِ الْقَوِيَّةُ الْأَمِينُ. قَالَ إِنِّي أُرِيدُ أَنْ أَنْكِحَكَ إِحْدَى ابْنَتَيَّ هَاتَيْنِ عَلَى أَنْ تَأْجُرَنِي ثَمَانِيَةَ عَشْرًا فَمِنْ عِنْدِكَ » [القصص: ٢٦-٢٨-٢٧].<sup>41</sup>

*Ijârah* in *fiqh* concept as suggested by al-Zuhailî was divided into two, namely *ijârah* of a goods' benefit and *ijârah* of a work or service. Each of these two *ijârah* has their own provisions.<sup>42</sup> *Ijârah* of a goods' benefit such as a house, shophouse, vehicle rents and the likes should be in the benefits allowed by Islamic law. Thus, any *ijârah* of benefit which is forbidden by Islamic law such as blood or dead body rents is prohibited.<sup>43</sup> Meanwhile, *ijârah* of a work or service is a transaction of a work or service and this work should be known and valuable as to be discussed in the requirements of this *ijârah* covenant. Workers or service providers in this *ijârah* covenant are divided into two. They are *ajîr khash* in which the lessor works for one person and must not serve others, and *ajîr musytarak* where the workers or service providers work not just for one person, rather they work for the public.<sup>44</sup>

<sup>39</sup> Amir Syarifudin, *Garis-Garis Besar Fikih*, 215-216.

<sup>40</sup> Wahbah al-Zuhaylî, *al-Fiqh al-Islâmi wa Adillatuh* (Beirut: Dâr al-fikr, s.a.), V/3801.

<sup>41</sup> «قَالَتْ إِحْدَاهُمَا: يَا أَبْتَ اسْتَأْجِرْهُ، إِن خَيْرٌ مِّنْ اسْتَأْجَرْتِ الْقَوِيَّةُ الْأَمِينُ. قَالَ إِنِّي أُرِيدُ أَنْ أَنْكِحَكَ إِحْدَى ابْنَتَيَّ هَاتَيْنِ عَلَى أَنْ تَأْجُرَنِي ثَمَانِيَةَ عَشْرًا فَمِنْ عِنْدِكَ » [القصص: ٢٦-٢٨-٢٧].  
«أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَّ عَرْقُهُ» رواه أبي هريرة، هاتين على أن تأجرني ثمانين حجج، فإن أتممت عشرًا فمن عندك » [القصص: ٢٦-٢٨-٢٧].  
lihat Wahbah al-Zuhaylî, *al-Fiqh al-Islâmi wa Adillatuh* (Beirut: Dâr al-Fikr, 1985) Vol. 4. 730.

<sup>42</sup>*Ibid*, Vol 4. 759.

<sup>43</sup>*Ibid*.

<sup>44</sup>*Ibid*, Vol 4. 766.

To meet the criteria of a legal *ijârah*, several requirements and pillars for forming the covenant should be fulfilled. In *ijârah* transaction, the pillars which should be fulfilled include the parties (lessee and lessor), *sîghat (ijâb qabûl)*, fee and benefit of a good. In addition, the requirements of this pillars should also be fulfilled. Some requirements of *ijârah* include the willingness of parties to the transaction, the object of *ijârah* should take the form of a benefit, it should be clear and valuable and its use is allowed in Islam's perspective.<sup>45</sup>

### ***Ijârah* in DSN-MUI's Verdicts and Sharia Banking**

By the time this paper was finished, 125 DSN-MUI's verdicts have been issued from 2000. Most of these verdicts discussed the covenant or contract of classical *fiqh* which had undergone transformation into a sharia banking product. This indicates the consistency and commitment of DSN-MUI in paying attention to the development of Islamic value-based financial institutions.

Of these many verdicts issued by DSN-MUI, at least six have something to do with *ijârah*. *Firstly*, in 2000 DSN-MUI issued a verdict number: 09/DSN-MUI/IV/2000 on *ijârah* Financing. This verdict explained the Pillars and Requirements of *ijârah* in *fiqh* concept which were then adopted into the verdict product of *ijârah* used in sharia financial institutions with not much significant transformation.<sup>46</sup> The *second* verdict related to *ijârah* is verdict number: 72/DSN-MUI/VI/2008 in 2008 on Government Islamic Securities *Ijârah Sale and Lease Back*. In this verdict, DSN-MUI gave a green light for the legalization of Government Islamic Securities using *ijârah* mechanism. Judging the bases of this verdict on SBSN, it could be seen that not many changes were made to the other verdicts related to *ijârah*.<sup>47</sup> The *third* one is the verdict number: 76/DSN-MUI/VI/2010 on SBSN *Ijârah Asset to be Leased*. This verdict still has something to do with SBSN above. It is just the specifications of object of *ijârah* in this verdict which have been determined and some of the object of *ijârah*

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<sup>45</sup>*Ibid*, jld 4. 731.

<sup>46</sup> Fatwa DSN-MUI No. 09/DSN-MUI/IV/2000 About Financing *Ijârah*.

<sup>47</sup> Fatwa DSN-MUI No. 72/DSN-MUI/VI/2008 About Surat Berharga Syariah Negara *Ijârah Sale and Lease Back*.

has been there when the covenant was made. Nevertheless, the handover of object of *ijârah* entirely is made in the future as agreed upon. This verdict refers more to contemporary Islamic scholars in relation to the same issue.<sup>48</sup> The *fourth* is the verdict number: 101/DSN-MUI/X/2016 on *Al-Ijârah al-Maushufah fi al-Dzimmah*.<sup>49</sup> The *fifth* one is the verdict number: 102/DSN-MUI/X/2016. However, this verdict is addressed to house ownership financing or PPR-indent. The construct of *ijârah* used in this verdict is the covenant of *al-ijârah al-muntahiyah bi at-tamlîk*.<sup>50</sup>

The concept of *ijârah* financing conceptualized of DSN-MUI's verdicts brought fairly significant change as compared to the classical *fiqh*-based *ijârah* concept. This change is acceptable since the bank itself is not a social institution, rather it is an entity in the form of financial institutions. Meanwhile, *ijârah* is a rent or service contract made between persons, not between financial institutions. Several *ijârah* financing products have been featured products in sharia banking. As observed by the writer, at least 4 Sharia banking products are offered by sharia banks in the form of *ijârah*-based financing. The four products are KPR BRIS iB, KMF Purna BRISyariah iB, KMF Pra Purna BRISyariah iB, and KMF BRI Syariah iB.<sup>51</sup>

These four products are divided into two types of *ijârah muntahiyah bi al-tamlîk* covenants or frequently called as IMBT. The four also have nearly similar application mechanism. Among the requirements to apply for this *ijârah* financing is the obligation for customer to apply for the financing by completing the application with copies of Family Card and ID Card, paycheck for civil servants or employees who have cooperated with BRI Syariah. Furthermore, BRISyariah will check the file completeness and see the potential customer's track record. Upon completing all of the requirements, the customer will be enlightened on some matters regarding the financing they apply for. These include the amount of financing installment and

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<sup>48</sup> Fatwa DSN-MUI No. 76/DSN-MUI/VI/2010 About SBSN *Ijârah Asset to be Leased*.

<sup>49</sup> Fatwa DSN-MUI No. 101/DSN-MUI/X/2016 About *al-Ijârah al-Maushufah fi al-Zimmah*.

<sup>50</sup> Fatwa DSN-MUI No. 102/DSN-MUI/X/2016 About *al-Ijarah al-Maushufah fi al-Zimmah* Untuk Produk financing Pemilikan Rumah (PPR)-Inden.

<sup>51</sup> Interview with Oki Kurnita as *Account officer* at BRISyariah, Purwokerto branch on Tuesday, August 21, 2018.

the costs payable by the customer after the financing money is received by the customer.<sup>52</sup>

In regard to the amount of financing and duration of installment, the customer can apply for the amount of financing they want with their desired financing term. For example, a customer applies for KPR financing amounting to Rp. 300,000,000.- for 15 years. The term within which the customer should make the payment depends on their ability and agreement between the customer and the bank.<sup>53</sup>

As a profit-oriented financial institution, sharia banks also provide services which are not free. Profit becomes the main goal of sharia bank establishment. This can be seen from the installment of the financing that the customer applies for. For example: If a customer applies for financing for consumptive purchase such as motorcycle at an amount of Rp. 16,000,000.- using an installment payment scheme at Rp. 512,000,000.- per month for 48 months, then the total amount of payment that the customer will make by the end of the term is Rp. 24,576,000.-. It inevitably raises a question on how the actual financing fund of only Rp.16,000,000.- should be paid, even if using the installment method, by the customer at Rp. 24,576,000.-. This clearly means that additional payment has to be made by the customer.

The costs of course have been calculated seriously by the sharia bank who should comply with both the state and Islamic laws at the same time. The addition of those costs is considered inappropriate in payments due to the new system. One of them is insurance which includes life insurance to minimize the non-performing loan risk caused by the customer's death. In addition to life insurance in the form of *takaful*, fire insurance is also added to cover the costs which may rise from possible fire or accident insurance if the application is for motor vehicle financing.

Also, the profit margin is added based on BI rate which has been mandatory for banks to comply with. Thus, if these costs are summed, the total amount of payment above is found. If it is to be

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<sup>52</sup> Interview with Oki Kurnita as *Account officer* di BRISyariah, Purwokerto branch on Tuesday, August 16, 2018.

<sup>53</sup> Interview with Oki Kurnita as *Account officer* di BRISyariah, Purwokerto branch on Tuesday, August 21, 2018.

associated with *ijârah* covenant, the form of *ujrah* (rent fee) which should be paid by the customer is in the form of additional margin of the amount which has been determined based on the amount of financing fund and payment term. Additionally, what makes it different from other covenants such as *bay' al-murabahah* is that the financing based on *ijârah Muntahiyah bi al-Tamlîk* has a descending installment mechanism. This means if the installment in the first month is Rp. 512,000.-, then the installment for the last month can be only Rp. 100,000.-.

Installment mechanism. This means if the installment in the first month is Rp. 512,000.-, then the installment for the last month can be only Rp. 100,000.-.

### **Transformation of *Ijârah*: Islamic Law Perspective**

In order to fulfill the market demand, sharia banking financial institutions should be capable of competing and winning their customers' hearts. This is important since sharia banks would not make any progress if they fail to innovate and keep up with the conventional banking market development. Thus, various strategies and new products should be made to face the challenges and market demand, particularly in the banking world. However, on the other hand, the products they offer should be different and more interesting to make them more attractive to the market.

As a product many people are attracted to, *ijârah* contract is also expected to compete in the banking world. As an institution in full charge of developing sharia economy-based product, Indonesia Ulema Council or *Majelis Ulama Indonesia* (MUI) is obligated to safeguard the development of sharia banking products in Indonesia. It is where MUI plays its role in developing classical *fiqh* contract-based verdict which is then developed into a sharia banking product in the form of verdicts issued by the National Sharia Board of Indonesia Ulema Council or *Dewan Syariah Nasional Majelis Ulama Indonesia* or DSN-MUI for short.

By the time this paper was finished, DSN-MUI has issued 125 verdicts related to sharia banking activities and economy. Six of them are associated with *ijârah*. The high market demand for service lease product in the banking field and global competition are thought of as logical reasons for the issuance of *ijârah*-based verdicts.

The first *ijârah* verdict was issued in 2000 under number: 09/DSN-MUI/IV/2000 on *Ijârah* Financing. This verdict explained the pillars and requirements of *ijârah* in *fiqh* concept which were then adopted in *ijârah* financing verdict product. In its process, this verdict serves as a reference for sharia financial institutions which wish to offer lease/service product based on sharia rules. Judging from the provisions in this verdict, initially, DSN-MUI wished to inform that classical covenants could be applied to sharia banking. However, this verdict does not elaborate the mechanism to be implemented considering that the issued verdict did not give significant transformation. The concept offered by this verdict was still exactly the same as that offered by the classical *fiqh* on *ijârah* covenant.<sup>54</sup>

What made the *ijârah* contract conceptualized in classical *fiqh* and in sharia banking different was the involvement of *wakâlah* covenant in several financing applied for. The inclusion of this *wakâlah* covenant was mandated to bridge the gap between the ideal contract based on sharia and the banking, while banks was a financial institution which was highly unlikely to purchase and sell goods. Thus, the use of other verdicts related to *wakâlah* became inseparable. It seems that DSN-MUI has also anticipated this by issuing DSN-MUI verdict number: 113/DSN-MUI/IX/2017 on *Wakalah bi Al-Ujrah* and verdict number: 10/DSN-MUI/IV/2000 on *Wakalah*. Upon the issuance of these verdicts, sharia financial institutions now have the basis in issuing a banking product in the form of financing by referring to DSN-MUI verdicts which have been stipulated as the mandate of Sharia Banking Law.

The involvement of *ijârah* in many DSN-MUI verdicts is not baseless at all. DSN-MUI based its verdicts on various accountable *nash* both from al-Quran, Hadith and opinions of *mujtahidîn*. The *nash* from al-Quran which was used as the basis for issuing this verdict was al-Quran surah Yûsuf verse 55 on Prophet Yûsuf's mandate, al-Nisâ verse 58 on mandate and justice, al-Mâidah verse 2 on helping each other and the first verse on promise fulfillment. Meanwhile, one hadith used as the basis in the verdict was the one narrated by al-Tirmizi from Amr ibn Auf al-Muzani الصلح جائز بين المسلمين إلا صلحا

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<sup>54</sup> Fatwa DSN-MUI No. 09/DSN-MUI/IV/2000 About Financing Ijârah.

حرام حلالاً أو أحل حراماً (*shulh* -amicable dispute settlement- can be done between Muslims except *shulh* which forbids what is *halal* (allowed) or allows what is *haram* (forbidden)). In addition, this verdict also heeded al-Zuhayli's statement on *wakalah bil ujah*. In his opinion, *wakalah* could be with *ujrah* (fee) or without *ujrah*. If *wakalah* was done with *ujrah*, then the provisions of *ijârah* should apply in it.<sup>55</sup>

As an institution upholding the mandate given by the law, sharia banks always rely its decision on the DSN-MUI verdict which is issued according to the need. These verdict serve as the basis to make banking products as needed by community without removing the sharia value which should be present in each product. As the time goes and the community's need keeps on developing, sharia banking products shall also change in many aspects. This includes the change in financing mechanism and the payment of *ujrah* and profit margin. The change in covenant construct which is a combination of many covenants cannot be separated from the role played by DSN-MUI Verdict which sets forth the pattern, reference and mechanism of various agreements which are then translated into a banking product by the sharia bank. These numerous provisions of covenant construct are established in the hope that they will anser the community's economic need, particularly in sharia banking field.<sup>56</sup>

Viewed from Islamic law, the establishment of banking products has deviated from what it is supposed to to refer to classical ulema's *fiqh* study and turned to refer to the verdicts issued by the National Sharia Board which is the main reference for sharia banks in Indonesia.<sup>57</sup> The position of the verdict itself binds stronger than the classical *fiqh* concept. This is because MUI with its DSN occupies the place of an institution authorized to issue verdicts related to economic law. Meanwhile, it is mentioned in sharia banking law particularly in

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<sup>55</sup> See Fatwa DSN-MUI No: 113 DSN-MUI/IX/2017 About *Wakâlah bi al-Ujrah*

<sup>56</sup> Fatwa DSN-MUI No: 09/DSN-MUI/IV/2000 About Financing *Ijârah*, No: 10/DSN-MUI/IV/2000 About *Wakalah*, No: 101/DSN-MUI/IX/2016 About *Akad al-Ijârah al-Maushufah fi al-Dzimmah*, No: 102/DSN-MUI/IX/2016 About *al-Ijârah al-Maushufah fi al-Dzimmah*, Untuk Produk Pembiayaan Pemilikan Rumah (PPR)-Inden, No: 1 1 2/DSN-MUI/IX/2017 About *Akad Ijârah*, serta No: 113/DSN-MUI/IX/2017 Tentang *Akad wakalah bi al-Ujrah*. Undang-undang Perbankan Syariah No: 21 tahun 2008 tentang Perbankan Syariah.

<sup>57</sup> Undang-undang Perbankan Syariah No: 21 tahun 2008 tentang Perbankan Syariah.

its general provisions that sharia principles are those Islamic law principles in banking activities based on the verdicts issued by the authorized institution. The authorized institution, in this case, is the *National Sharia Board of Indonesia Ulama Council (DSN-MUI)*. Additionally, the function of the verdict for the community, in general, is to be a proposition for the problems arising among them. Thus, it is not exaggerating to say that verdict *fi Haqqi al-'Ami ka al-Adillah fi Haqq al-Mujtahid*, means that the position of verdicts for most people is like the proposition for *mujtahid*.<sup>58</sup>

Also, verdicts are the result of *ijtihad* made by experts who are capable of exploring sharia Islam. Therefore, the existence of verdicts serves as a strong basis to answer the contemporary problems which keep on developing. Hence, it is highly reasonable to say that the advancement or regression of a Muslim community, in exploring their tenets depends on the verdict and *ijtihad* of ulema during their time. In the absence of verdict and *ijtihad*, Islam teaching will be less developed or even nearly static. This is because, as we all know, the pure inspiration in exploring Islam teachings themselves ideally comes from the *ijtihad* process which matches the current condition which is then manifested in the form of established and accountable religious verdicts.

### Conclusion

*Ijârah* began with classical *fiqh* concept and now it is one of transactions which support the development of sharia banking. The wide scope of banking products produced from *ijârah* concept becomes the basis for developing *ijârah* concept from a classical *fiqh* contract into a banking product in the form of financing. This development can be seen from many banking products which use *ijârah* covenant, particularly those related to services. This development lies in the combination of *ijârah* contract with several other contracts such as *wakâlah*. Another development in *ijârah* concept to *ijarah* financing is seen from its basis. In classical *fiqh* concept, *ijârah* is a product of *ijtihad fiqh* of *zhanni* and non-binding nature. Every Muslim may implement the concept of *ijârah* from any ulama which is *ijtihadiah* in nature. However, in *ijârah* financing, in

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<sup>58</sup> Zainuddin Ali, *Hukum Ekonomi Syariah* (Jakarta: Sinar Grafika, 2008), 127



addition to being a combination of several covenants, it uses DSN-MUI verdicts which are binding the sharia financial institutions more strongly for the mandate given by sharia banking law.

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