

Transcendental Ethics Between Islam and the West: An Analysis of the Fatwa of the National Sharia Council of the Indonesian Ulema Council on Usury in Murabahah

Iksan Iksan¹, Kelik Wardiono², Wardah Yuspin³, Absori Absori⁴, Ridwan Ridwan⁵, Albertus Heru Nuswanto⁶

Abstract

This study aims to analyze the aspects of transcendent ethics between Islam and the West as material for analyzing the aspect of usury in the DSN-MUI fatwa on murabahah.

Theoretical Framework: This paper used the philosophy of axiology or philosophy of values as a theoretical framework. It also uses the prophetic paradigm. This study uses a normative-philosophical legal research method. The type of data is secondary with a literature review to obtain data. While the data analysis uses descriptive analysis, interpretation, and hermeneutics. The results of the study show that the fatwa on murabahah, especially those related to the regulation of usury as stated in the DSN-MUI fatwa No. 04/DSN-MUI/IV/2000, shows that Islamic ethics is still mixed with western ethics, especially Protestant ethics in Max Weber's understanding. This happens because there is a clause in the general provisions that allows customers to buy their own goods using the makalah contract. The implication is that researchers must be more and more productive in discussing and writing about murabahah. This research is limited to the DSN-MUI fatwa and ethics to understand usury in murabahah so it needs to be expanded again with other aspects, such as contracts, guarantees, discounts and others. Research on murabahah and the DSN-MUI fatwa has been widely conducted by researchers both in Indonesia and the world. However, research that discusses aspects of Islamic and Western ethics as a barometer for assessing fatwas is still very rarely conducted by researchers. So, this research is very important to add references and different perspectives to assess fatwas.

Keywords: *Fatwa, Murabahah, Transcendent, Usury.*

Introduction

The fatwa of the National Sharia Council-Indonesian Ulema Council (DSN-MUI) actually plays an important role in determining the halal and haram of the implementation of Islamic Financial Institutions (LKS) in Indonesia. Therefore, the DSN-MUI fatwa must be ensured to be in accordance with the spirit of the values contained in the Qur'an and Sunnah as the basis of its ethics. One of the legal products issued by the DSN-MUI through its fatwa is about murabahah which is implemented in Islamic financing institutions. The murabahah contract is a sale and purchase contract implemented by Islamic banking by determining the selling price and adding a margin by the banking party as profit.

The DSN-MUI fatwa will apply to all financing institutions including Islamic Commercial Banks (BUS), Islamic Business Units (UUS) and Islamic People's Financing Banks (BPRS) which have now metamorphosed into Bank Syariah Indonesia (BSI) and non-banking institutions such as Pegadaian Syariah and Baitul Maal wa Tamwil.

The implementation of murabahah in Indonesia occupies a very urgent position considering that 47.88%

¹ Universitas Muhammadiyah Surakarta, Email: iksan687@ums.ac.id, (Corresponding Author)

² Universitas Muhammadiyah Surakarta, Email: kelik.wardiono@ums.ac.id.

³ Universitas Muhammadiyah Surakarta, Email: wy204@ums.ac.id

⁴ Universitas Muhammadiyah Surakarta, Email: abs154@ums.ac.id

⁵ Universitas Muhammadiyah Bima, Email: sahecapi13@gmail.com

⁶ Universitas Semarang, Email: heru.nuswanto@usm.ac.id

of sharia banking transactions now use murabahah financing with a total financing of 242.23 trillion. While musyarakah is 44.83% with financing of 226.67 trillion and mudharabah is not so much in demand, only 2.74% of the total financing of 10.57 trillion (Financial Services Authority (Otoritas Jasa Keuangan/OJK), 2023).

The long journey of the DSN-MUI fatwa since 2000 and now running for more than 23 years, apparently some people still feel that it is not fully capable of freeing LKS from usury. The impression captured by some people is that this Islamic financing institution only changes its cover from conventional banking even though the contracts have a sharia nuance. So that LKS is considered to still have aspects of usury, gharar and maisir as well as *zhalim* (abuse).

The basic questions that can be asked to test the assumptions of the community lie in two things. First, whether the DSN-MUI fatwa so far has not truly reflected Islamic law as culturally understood by the Islamic community or not. Second, if the DSN-MUI fatwa is in accordance with Islamic law, is the implementation of LKS operations in accordance with the fatwa issued by the DSN-MUI? Third, whether when the DSN-MUI issued a fatwa on murabahah transactions, was it able to escape from the values of capitalism that have long penetrated the conventional banking world.

and third questions using prophetic ethics as understood by Kuntowijoyo. Thus, the researcher wants to correct the ethical aspects in the DSN-MUI fatwa.

This question actually arises to answer the anxiety of the Indonesian people, 88% of whom are Muslims. Some of them still think that murabahah in LKS is more expensive than credit in conventional banking. If only this question could be answered carefully, it is expected to be able to raise public trust to be able to use sharia financing as the main choice in managing productive businesses so that it has an impact on increasing welfare.

If you read the legal product of the DSN-MUI fatwa carefully, there are several fundamental things that should be regulated in the fatwa but there are no clear provisions in the fatwa. For example, in the existence of a contract with a supplier of goods, there must not be a multi-agreement (Isfandiar, 2014). In one transaction, the regulation on the right of *khiyar* for customers, the Islamic banking party should sell their goods, and in responding to bankruptcy or default, the Islamic economic system provides the option of deferral and/or giving charity.

All of the above are not explained comprehensively in the DSN-MUI fatwa on Murabahah. So that it gives rise to the assessment that it is true that the murabahah contract in Islamic banking is no different from the credit agreement practiced by conventional banks. So according to the author's assumption, this certainly stems from the unclear legal norms regulated in the DSN-MUI fatwa so that between the values of the Qur'an and Sunnah as the basic ethics of Islamic economics and what is stated in the DSN-MUI fatwa there is disharmony, incoherence.

The problems of usury, gharar and maisir are principles of the Islamic economic system. Etymologically usury means addition or increase. The word usury is known in Islamic law in two forms, the first is the prohibition in the form of time (credit), and the second is the prohibition on anything that is excessive in a transaction or regarding basic food (Qurthubi, n.d.).

Usury is a corrupt transaction (*fasiq*) which is strictly prohibited. Literally, usury means to increase. In the terminology of Islamic jurisprudence, usury means an addition in one of two homogeneous goods exchanged without any substitute or balancing transaction that is permitted by sharia. Usury is divided into 2 types, namely usury *an nasiyah*, where this addition is given because of the suspension, or waiting for payment (Chapra, 2000).

Gharar is something whose exterior deceives the buyer, while its interior is unknown. *Gharar* sale and purchase is a sale and purchase that is (done in an) unusual and unreliable manner. Included in this category are purchases and sales that do not include the substance, where the seller and buyer carry out the sale and

purchase without knowing the type (Qurthubi, n.d., p. 120). *Al maisir* is defined as buying and selling that contains elements of gambling (Katsir, n.d., p. 423; Qurthubi, n.d., p. 118). Where these three things, the Koran and the hadith of the Prophet explain clearly how forbidden they are.

According to AAOIFI, a fatwa refers to a sharia opinion conveyed to someone who seeks it in connection with an event that has occurred (Fatwa event) or is expected to occur. This law is called "religious law" (*al-bukmu ad-diyami*) and is used by muftis in issuing fatwas (Az-Zuhaili, 2011, p. 32).

These ideal values that originate from Islamic law (the Quran and Sunnah) cover various aspects of human life, starting from issues related to human relations with Allah such as faith and worship, as well as human relations with other human beings such as morals and muamalah. In the context of banking as an activity that is muamalah in nature, the provisions and sources of ethics have been stated by Allah and His Messenger in the Quran and Sunnah. This should be understood with the approach of Faith that Islam as a teaching already contains ideal values that must be obeyed and adhered to by his followers.

Ethics in its meaning comes from the Greek word *ethos* which has many meanings such as a common place to live; pasture, enclosure, habitat; habits, customs; morals, character; feelings, attitudes, and ways of thinking (Bertens, 2013, pp. 3–4). Ethics is a branch of philosophy that talks about the measure of good and bad based on human knowledge and reasoning. Majid Fakhry defines ethics as a rational description of the nature and basis of correct actions and decisions and the principles that determine the claim that these actions and decisions are morally ordered and prohibited (Fakhry, 1996, p. xv). According to Franz Magnis Suseno, ethics is not an additional source for moral teachings, but rather a philosophy or critical and fundamental thinking about moral teachings and views. Ethics is a science, not a teaching. Ethics is systematic thinking about morality (Arafat, 2013).

Amin Abdullah said that ethics or noble morals are far more important than theology, kalam and metaphysics, even above science and technology (Abdullah, 2020). In Islamic ethics, humans are the center of God's creation. Humans are God's representatives who aim to realize virtue as free agents because they are equipped with free will, able to choose between good and evil between right and wrong (Haider, 2003).

The application of Islamic values in the economic field, especially in Islamic financial institutions, still experiences many problems, especially when faced with the practice of implementing murabahah financing. In the implementation of Islamic banking, the ethical values in Islamic teachings that are the principles are sometimes ignored. This may also occur because Islamic banking still follows the pattern practiced by conventional banking, so that many parties consider Islamic banks to only "change the cover" of conventional banks. (Budiono, 2017)

Based on the explanation and description above, the DSN-MUI fatwa in Islamic ethics must also be criticized. Fatwa is not an absolute truth that must be accepted and swallowed because fatwa is the result of the thinking of a group of people who can be right and also wrong. The flaws produced by the fatwa must be reconfirmed based on good evidence contained in the Quran, Sunnah, and Ijtihad or the opinions of previous scholars.

Theoretical Framework

Axiology comes from the word *axios* in Greek which means value and *logos* which means science. Thus it can be concluded that axiology is the science of values. Jujun S. Suriasumantri explains that axiology is a theory of values related to the usefulness of acquired knowledge (Suaedi, 2016).

In the philosophy of axiology or philosophy of values, there are usually 3 things that become the objects of discussion, namely: 1. Ethics which discusses human behavior from the perspective of good and bad values, or right and wrong. 2. Aesthetics, which discusses something from the perspective of beautiful and unbeautiful values. 3. Religion which discusses something from the perspective of religious values or belief systems (Sulaiman, 2019).

Philosophy of values is the search for truth about the essence of values and meanings that are carried out in depth, systematically, and universally. Philosophically, the true meaning and continuity of the world. The philosophical meaning of values is the essence of all of God's wills, a glimmer of His will that has been poured out on the human soul. Therefore, values are related to something that is seen as meaningful, both personally and socially (Rasyidin & Amroeni, 2016).

The existence of Humanities that is different from Sciences can be learned from the Quran. One verse of Allah indicates the existence of two different categories of knowledge, namely knowledge of the horizon (*'āfaq*) and knowledge of the human self (*anfusihi*). We will show them Our signs in the horizons and within themselves (The Qur'an, chapter Fushshilat: 53) (Kuntowijoyo, 2006).

According to Kelik Wardiono, prophetic comes from English, prophetic, which means 1) relating to a prophet or prophetic inspiration, 2) having the nature or containing prophetic elements, 3) having the function or power of a prophet, 4) prophetic signs or prophetic warnings. Meanwhile, the Prophet himself comes from the word *naba* which means news, news, stories and fairy tales. According to Ibn Manzur, the word prophet is attributed to the root words *Nubuwwah*, *al nabawat* and *al nabi* which means high land, path. The plural *al anbiya* means a path that is used as a guide and someone whose abilities are glorified (Wardiono, 2020).

Prophetic from the word prophetic which means prophetic or related to prophets. This English word comes from the Greek word *'prophetes'* a noun to refer to a person who speaks first or a person who proclaims himself and also means a person who speaks the future. Prophetic or prophetic here refers to two missions, namely someone who receives revelation, is given a new religion, and is ordered to preach to his people is called an apostle (messenger), while someone who receives revelation based on the existing religion and is not ordered to preach it is called a prophet (prophet) (Roqib, 2011).

Heddy Ahimsa Putra defines a paradigm as a set of concepts that are logically related to each other to form a framework of thought that functions to understand, interpret and explain the reality and/or problems faced (Ahimsa-Putra, 2009).

Meanwhile, Khudzaifah quoted Thomas Kuhn's paradigm saying that paradigm is understood in two senses, namely, 1). As a constellation of thoughts, beliefs, values, technical perceptions adopted by academics and practitioners of certain disciplines who have a way of dealing with the reality of their research objects and 2) as a human effort to solve the secrets of science that is able to overturn all existing assumptions and rules (Dimiyati, 2018).

Paradigm is the freedom of humans to do anything without having to fear factors that threaten life. Paradigm must be independent, especially from the intervention of the authorities. Paradigm must be proactive and respond to every suffering or symptom that is detrimental to society. In research, it should present themes that are not sectarian, even better ones that are more useful for the future (Moeslimin, 2016).

The relationship between Islamic teachings that are textual in nature with empirical aspects, for example, is stated in the command to pray. In addition to being a command from God, it also has an empirical dimension, namely preventing humans from committing evil and wrongdoing. Or *zakat* which has a vertical dimension as a command from God and its horizontal dimension as a form of social solidarity, or what Amin Rais calls social monotheism (Hidayah, 2015), and Fazlurrahman calls it double movement (Sibawaihi, 2007).

In the idea of Islamic science, Kuntowijoyo emphasizes the public nature of the purpose of science. He sees the shortcomings of science in terms of separation from ethics and partisanship. This is attempted by integrating modern science with prophetic religious values. Prophetic social science, as initiated by Kuntowijoyo, is part of a movement to reconstruct science that has been dominated by Western science. The strategy is to integrate science and religion, reason and faith, and reason and heart (Wardiono, 2020). This is also what Absori said that prophetic legal science bases values based on the objectification of the

Qur'an and Hadith, also based on human efforts (*ijtihad*) obtained with their potential abilities through contemplation, reasoning and discourse that develops in society (Absori, 2017).

Kuntowijoyo bases his theory of prophetic ethics on the word of Allah in The Qur'an, chapter Ali Imran: 110. "*Kuntum khaira ummah ukbrijat linnasi ta'muruna bil-ma'rifi wa tanbamina 'anal-munkar wa tu'minina billabi* (You are the best nation raised for mankind, enjoining what is right and forbidding what is wrong, and believing in Allah). According to him, this verse contains four implicit things, namely (1) the concept of the best nation, (2) historical activism, (3) the importance of awareness, and (4) prophetic ethics (Kuntowijoyo, 2006).

According to him, *amar ma'ruf* (humanization) in everyday language can mean anything, from the very individual such as praying, *dhiker* (remembering God), and prayer, to the semi-social, such as respecting parents, strengthening brotherhood, and caring for orphans, as well as the collective such as establishing a clean government, working on social security, and building a social security system. For that we will use the word humanization. In Latin, *humanitas* means "human being", "condition of being human" so humanization means humanizing humans; eliminating "materiality", dependency, violence, and hatred from humans.

Forbid evil (Liberation) in everyday language means anything, from preventing friends from consuming ecstasy, prohibiting fights, eradicating gambling, eliminating loan sharks, to defending the fate of workers and expelling colonizers. For that we will use the word liberation (Latin *liberare* means "to free") meaning "liberation", all with connotations that have social significance.

For the sake of Allah (transcendence) in the Qur'an which has a special meaning, we will use a very general terminology, namely transcendence as an equivalent. The word transcendence (Latin *transcendere* means "to rise above"; English to transcend is "to penetrate", "to pass", "to go beyond") means "a journey above or beyond". This word includes everyday terms (eg someone who is too strong like Superman, altruism overcomes individualism), transcendental literature (literature that tries to find spiritual reality behind phenomena), transcendental philosophy (eg Kantianism which believes in a priori knowledge beyond experience), supernatural phenomena (eg ESP [Extra Sensory Perception] and TM [Transcendental Meditation]), and theological terms (eg about divinity, supernatural beings). The theological term is what we mean by transcendence (Kuntowijoyo, 2006).

Murabahah Ethics According to Zubaili

According to Ash-Shawi, akad in language means agreement. In terms of terms, akad is a binding of one's will to something else in a way that gives rise to a certain commitment that is prescribed by law (Ash-Shawi, 2001).

In the DSN-MUI fatwa on the Murabahah contract, it is explained that the Bai' al-Murabahah contract is a sale and purchase contract for goods by confirming the purchase price to the buyer and the buyer pays a higher price as profit (Indonesian Islamic Scholar Assembly, 2017). *Murabahah* sale and purchase agreements are divided into the following forms; *Bai' al-murabahah al-'adiyyah* is a *murabahah* sale and purchase agreement made on goods that are already owned by the seller at the time the goods are offered to prospective buyers. And *Bai' al-murabahah li al-amir bi al-syira'* is a *murabahah* sale and purchase agreement made on the basis of an order from the prospective buyer (Indonesian Islamic Scholar Assembly, 2017).

Etymologically, buying and selling is the process of exchanging goods for goods. Meanwhile, in terms of terminology, buying and selling according to Hanafi scholars is the exchange of maal (goods or assets) for maal which is done in a certain way. Or, exchanging items of value for something like that in a legal and special way, namely *ijab-qabul* or *mu'aathaa'* (without *ijab qabul*) (Az-Zuhaili, 2011, p. 25). Imam Nawawi in the book *Majmu'* said that buying and selling is exchanging goods for goods with the intention of giving ownership (Az-Zuhaili, 2011, p. 25).

According to Ash-shawi, there are three pillars of a contract, namely; 1) two or more parties who carry out the contract, 2) the object of the contract (transaction), 3. the wording (*shigat*) of the contract/*ijab qabul* (Ash-Shawi, 2001, p. 27).

Quoting Hanafi Zuhaili, he explains that the pillars of buying and selling are agreements which indicate an intention to exchange or something similar (*mu'athaa*). Imam Nawawi argued that '*Ash-shafqah* actually means buying and selling transactions, because one of the Arab customs is that one of the buying and selling parties places his hand on the other party when the buying and selling has been completed (Ash-Shawi, 2001, p. 26).

Az-Zuhaili explained that there are five conditions that need to be considered in implementing murabahah as explained in his book *Islamic Fiqh Waadilatuhu*, namely as follows (Az-Zuhaili, 2011, p. 358):

Knowing the first price (purchase price)

In order for a murabahah transaction to be valid, the second buyer should know the first price, because knowing the price is a valid condition for buying and selling. This condition also applies to all murabahah brothers, such as tawliyah, isyrak and wadhi'ah.

- Knowing the amount of profit requested. The profit requested by the seller should be clear, because profit is part of the price of the goods. While knowing the price of the goods is a valid condition for buying and selling.
- The capital disbursed should be in the form of mitsliyat goods (goods that have similar variants).
- Murabahah buying and selling on usurious goods should not result in usury of the first price.

Ethics of Buying and Selling According to the West

The ethics of buying and selling according to the West in my research uses the ethical theory of Max Weber to discuss its theological basis. As for the theoretical aspect of buying and selling, I took it from the theories of buying and selling in three countries, namely the Netherlands, England and Indonesia. These theories are taken from to complete the ethical aspects of buying and selling which will be used as analytical material that determines the ethical basis used by DSN-MUI in formulating fatwas on murabahah.

According to Weber, this work ethic is taken from Protestant doctrine which is summarized in three teachings, namely the concept of the calling, the doctrine of predestination, and worldly asceticism. Protestant ethics is a concept and theory in theology, sociology, economy, and history that questions the problem man shaped by values on culture around it, especially the values of religion (Weber, 1993, p. 33).

First, the Calling, as it is generally understood, relates to the idea that the highest form of one's moral obligation is to fulfill one's duty to the world (Weber, 1993, p. 34).

Second, the theory of predestination holds that God has already decided a person's future destiny and level of salvation. Not everyone knows about their level of salvation. Believers will never know whether they are damned or saved (Weber, 1993, p. 35).

Third, worldly asceticism, that is, when a lifestyle of restricting consumption is combined with the pursuit of wealth, the inevitable practical result is the continuous accumulation of capital. It is this Protestant asceticism that is an important factor in the growth of the spirit of capitalism. This spirit, according to Weber, provides an important impetus for changing the structure of society (Weber, 1993, p. 37).

Worldly asceticism is the realization that the constant accumulation of capital is the inevitable practical result of combining a frugal lifestyle with the pursuit of maximum wealth. The emergence of the spirit of capitalism can be attributed in large part to the asceticism characteristic of Protestantism. According to Weber, this mentality offered a significant catalyst for the fundamental transformation of capitalist society (Weber, 1993, p. 38).

Max Weber in his book *The Protestant Ethic and the Spirit of Capitalism* believes that working hard and earnestly, without expecting material rewards, is a characteristic of capitalism. The Protestant ethic became a mark about selfless hard work to achieve success. The Protestant doctrine of ethos is directly related to the spirit of working hard to seize the worldly life successfully. The measure of worldly success is also the measure of success in hereafter. So this encourages a high work spirit among Calvinist followers. The measure of success and the measure of failure for individuals will be seen by the measure which is evident in its socio-economic activities. Failure to obtain worldly life will be a threat to the afterlife. Your success in the world economically will bring you to heaven while your poverty and misery in the world will bring you to the torment of hell (Weber, 1993, p. 49). According to Weber, capitalism is the offspring of a way of thinking (paradigm) and acting, not a mode of production born of economic power (Jones, 2009).

Weber further said that "Capitalism is identical to the pursuit of profit by means of continuous, rational efforts with capitalist companies and rational capitalist organizations of free labor. Calvinism and the development of capitalism are emphasizing individualism, or on human decisions according to their own awareness and interests, regardless of any group, and this individualism is considered a product in both religious and economic contexts (Sztompka, 2011).

Karl Marx has almost the same view as Max Weber on the ethics of capitalism. In his magnum opus *Capital*, Marx said that the most prominent thing about capitalist behavior is the massive increase in production while maintaining balance with the consumption aspect (Marx, 1981).

Capitalism as introduced by Karl Marx is a production system based on the relationship between capital and labor. The owner of capital has full rights to what is owned (Ruddin & Rusadi, 2023).

While Adam Smith viewed that there was a hidden power that would regulate the market (invisible hand), then the market must have *laissez-faire* or freedom from government intervention. The government only serves as a supervisor of all work done by its people (Itang & Daenuri, 2017).

According to Choirul Huda, Adam Smith put forward 5 basic theories of capitalism: 1. Recognition of private property rights without certain limits. 2. Recognition of personal rights to carry out economic activities in order to improve socio-economic status. 3. Recognition of the existence of economic motivation in the form of the spirit of achieving maximum profit. 4. Freedom to compete. 5. Recognizing the laws of free market economics/market mechanisms (Huda, 2016).

Capitalism according to Nijahayatul can be described briefly as wealth used in producing more wealth and Capitalism itself is a system that directs "that

process". This term also indicates the process of organizing production or trade throughout the world on an individualistic, secularistic and materialistic basis. People with the help of previously accumulated wealth, more often using money borrowed with interest, hunt for profit and wealth for themselves by using a large amount of human labor in return/wages (Masykuroh, 2020).

The Challenges of Business Ethics involve the concepts of Social Responsibility, Principles of Management Education, and Sustainable Development. The need to change the Western intellectual paradigm of capitalism, because the neoliberal and utilitarian approaches are limited. The crisis of managerial thinking can be overcome by overcoming the limitations of rationalism, positivism, and technological beliefs. Other limitations come from speculative thinking, the limitations of empiricism, romantic feelings, and uncontrolled emotions. Management experts try to improve their practices with philosophical values and principles that are not conditional (Kučera, 2022).

Capitalism focuses on continuous sales to overcome the problem of lack of demand. Individuals can earn income by becoming independent direct-to-consumer salespeople. Sales growth has been increasing since the 1980s and has exploded in the era of social media. Multilevel marketing schemes reinforce neoliberalism and exploit gender inequality with false feminist rhetoric about women's empowerment (Wrenn & Waller, 2021).

Western economists believe that financial regulation of banks and insurance, good corporate governance, and progressive taxation can prevent economic disaster. However, libertarian economics emphasizes freedom from moral rules, while Islamic economics is based on morality. Islamic finance can contribute to welfare capitalism if regulated transparently. Oil-rich Muslim countries face economic inequality, but redistribution according to Islamic principles can address this problem. The transformation to a new economy remains a challenge for those who want capitalism to be morally enhanced (Karim, 2010).

According to Ajdi Samekto, this Protestant ethic is largely based on Calvin's teachings, which among other things state that: "work is not merely a means or economic tool, work is a spiritual end goal". To stay away from poverty, it is an obligation for humans to choose work that is more economically profitable (Samekto, 2008).

There are three things that are the basic nature and character of capitalism. These three things underlie the oppression that has occurred since the emergence of capitalism until the practice of capitalism that is happening now. These three things are (Huda, 2016):

- Exploitation, large-scale and exhaustive exploitation of natural and human resources
- Accumulation means accumulation.
- Expansion, this means spreading wings or expanding market areas, as in the early phase of capitalism.

Methodology

This research is based on a normative-philosophical approach. (Wardiono, 2016): The main source of data in this study is information derived from library materials, in the form of: books, articles and dissertations on legal science and various scientific writings that are directly related to the object of research, namely: (a) Works written by Kuntowijoyo, especially those related to prophetic concepts; (b) Works written by Zuhaili, especially those discussing buying and selling *ormurabahah*; (d) written works by philosophers and scientists related to the object being studied.

Based on the data that has been processed, the data will then be analyzed. Descriptive, this method is used to obtain a systematic and objective picture of the facts, characteristics, and relationships between the elements that form the basis of ethical values used by DSN-MUI. Interpretation and hermeneutics, these two analysis methods are used to find the meaning behind the results of descriptive analysis.

Results and Discussion

This transcendental aspect is taken from the DSN-MUI fatwa which generally explains various aspects of *murabahah*. Therefore, what will be explained later in this transcendental ethic is only related to things that are transcendental in nature.

The meaning of things that are free from usury as a clause in the DSN-MUI fatwa must be understood as Islamic law defines usury. Zuhaili in al Munir's interpretation explains that according to language, *riba* means excess or addition, while according to sharia it is a form of additional or excess of certain assets without anything being replaced or rewarded in an exchange of assets for assets, or a form of excess in the amount or *al Ajal* (payment period) in a transaction such as buying and selling, debts in the form of money or food

(Az-Zuhaili, 2013).

Zuhaili further explained that in interpreting Al Baqarah: 275 he explained that people who take usury and justify it because of excessive love for wealth and following the whispers of lust and people who consume other people's wealth in a false way and without work or effort. In this case, they cannot remain calm, are always restless, their hearts are tormented and they are too immersed in worldly problems, they are like people who are controlled and possessed by demons or jinn.

Zuhaili even said that this was a very ugly and terrible picture and was proof of a condition caused by the capitalist economic system based on usury which is implemented throughout the world today, in the form of an unstable condition, everywhere there is unrest, worry, fear, various nervous diseases and mental illnesses emerged.

Free from usury as stated in the DSN-MUI fatwa should be understood from two types of usury, namely *Nasiah* usury and *Fadhl* usury. *Riba nasi'ah* is a real excess payment made to one of the substitutes due to a time limit, or ending the delivery of one of the substitutes until a certain time without any additions. This form of usury is used by banks today, and this form of usury is stated in the Qur'an as a forbidden form of usury. Scholars agree that this form of usury is haram and a major sin.

Usury *fadhl* in a sale and purchase transaction is the exchange of an item with a similar item, but in a greater quantity such as selling one *ritbl* of wheat or honey or dates with two *ritbl* of the same item or exchanging one dirham with two dirhams. Sometimes *riba fadhl* is also found in debt contracts, namely an excess payment required by the lender without anything in return.

In Annisa's letter: 29, Allah SWT says, "O you who believe, do not devour each other's wealth in a false way, except by means of commerce which is carried out with mutual consent between you. In Zuhaili's interpretation, this verse explains to believers, do not take property other than your own in ways that are prohibited by the Shari'a, such as usury, gambling, extortion and cheating, etc. However, you are allowed to take their property by carrying out business based on willingness or kindness between two parties, and adhering strictly to the Shari'a. *At-Tijarah* is an act of buying and selling. *At-Taradbi* is a transaction between two people who carry out buying and selling without any deception, the act of covering up defects in goods, acts of gambling and usury (Az-Zuhaili, 2013).

The Messenger of Allah in several hadiths has explained, as explained in the prophetic ethics above, that *riba* in whatever circumstances and conditions is still haram, whether the addition is a little or a lot. Both in the form of usury *nasiah* and usury *fadhl*. Therefore, the Prophet emphasized in his hadith by equating the sin of usury with the same as committing adultery with one's biological mother, or committing adultery 36 times, and every flesh that grows from the results of usury is worthy of the punishment of hell.

Thus, referring to the verses of the Koran and Hadith, it is actually clear that the prohibition of usury is clear, both in the information conveyed by the Koran and Sunnah as well as in the explanations of scholars, both tafsir scholars and *fiqh* scholars. In the context of understanding usury in the *murabahab* aspect, the ulama also agree on the permissibility of this *murabahab* contract in carrying out *mualah*. However, with conditions that are quite strict and do not make things easy, you can fall into the valley of usury, which is clearly forbidden according to Islamic sharia.

Erwandi said there are several fundamental things that must be considered in the implementation of *murabahab* by LKS. First, the sale and purchase agreement is not intended to legalize usury. This means that it does not separate capital and margin/profit in the agreement because it is the same as usury. Second, the goods have been owned by the seller and have been received before being sold, meaning that the LKS must buy the goods and the goods must legally belong to the bank before being sold. Third, the price must be one and clear and the installments and time period must be clear. For the validity of credit sales and purchases, at the time the transaction is made the price must be one and clear and the amount of the installments and the repayment period must also be clear. Fourth, the credit sale and purchase agreement is firm. Fifth, there is no penalty for late payment of installments.

When examined from the western ethical approach, especially in relation to usury in buying and selling, we can see Max Weber's opinion on Protestant ethics. As explained above, there are three main elements of Protestant ethics in understanding economic activities, namely, the calling, doctrine predestination, and worldly asceticism.

In the theory of the calling, Protestant ethics sees that serving God and fellow human beings is God's calling or destiny. A person who can be saved in the afterlife by obtaining heaven must also be saved in the worldly life. This means that if someone is rich and has a lot of wealth, so that he can serve God by saving as many people as possible, then he is the one who will be saved in the afterlife.

The doctrine of the calling requires that there be coherence of wealth obtained in the world to save it later in the afterlife. Therefore, being rich actually means substantially worshipping God. So according to Weber, this Protestant ethic is one of the foundations of the birth of western capitalism.

The doctrine of predestination holds that the true sign that a person is one of the chosen and destined is when they accumulate wealth and use their income to advance the Community of God. From this concept it is understood that accumulating wealth is one of the paths to salvation, by collecting as much money as possible in order to expand the community (children) of humanity towards the kingdom of God.

Seeing this western ethical concept, for him there is no haram money or haram goods because of interest or usury, money is still money, the difference is in the amount and the little. This is certainly very contrary to Islamic law. Where the way to get money becomes an important thing to pay attention to because it will contain haram.

According to the doctrine of worldly asceticism when the restriction of the consumption lifestyle is combined with the pursuit of wealth, the inevitable practical result is the continuous accumulation of capital. This doctrine and concept also became the basis for the development of early capitalism. A person may be devout in religion, restrict his lifestyle and be frugal, but the process of seeking as much wealth as possible continues because wealth is the determinant of salvation in the hereafter.

By observing Islamic ethics and western ethics about *murabahah* or buying and selling, especially related to the theological basis in economic activities, especially the implementation of LKS, it can be understood to be in two different poles. To understand what basis is used by DSN-MUI in formulating a fatwa related to being free from usury as stated above. It must be studied in the perspective of Islamic theology and western theology about *murabahah* or buying and selling.

The understanding of usury-free buying and selling in the perspective of DSN-MUI does not only refer to the legal norms mentioned above, it must also look at other ruling norms that are relevant to the discussion of usury-free. In the same fatwa, fatwa No. 04/DSN-MUI/IV/2000 concerning *murabahah*. Several relevant legal norms are in the general provisions of numbers 1, 2 and 4 as mentioned above. However, when the legal norm in number 9 "If the bank wishes to represent the customer to buy goods from a third party, the *murabahah* sale and purchase agreement must be carried out after the goods, in principle, become the property of the bank". The legal norm of the DSN-MUI fatwa changes the understanding of the formalism of the prohibition of usury in *murabahah* buying and selling into disguised usury wrapped in buying and selling.

If we look closely at the DSN-MUI fatwa No. 04/2000, especially numbers 1, 2, 4, and 9, we will find oddities and contradictions in the formulation of its norms because they are in two different poles. Legal norms that prohibit usury in sales practices cannot be coherent with providing a representative to buy goods. Representing customers in relation to the purchase of goods has been prohibited by scholars. This is stated in the AAOIFI decision 3/1/3 which reads "The original principle is that the LKS itself purchases goods directly from its suppliers. However, it is permissible for the LKS to carry out purchases by authorizing an agent (other than the purchase orderer) to carry out the purchase; and the purchase orderer should not be appointed to act as an agent except in very urgent circumstances.

There are no legal norms regulated by the DSN-MUI related to emergency conditions. This means that there is an effort by the DSN-MUI to facilitate the implementation of the *murabahab* sale and purchase agreement by including a clause of legal norms, especially in point 9 of the general provisions. This is also Zuhaili's opinion that in the name of sale and purchase, according to sharia, LKS must buy and own the goods. After the goods legally belong to LKS, the goods are then contracted to be sold even at the same time. This is also supported by the opinions of Erwandi and other scholars such as Ibn Rushd.

Therefore, the ethical tendency of the legal norms of the DSN-MUI decision related to being free from usury does not actually reflect Islamic ethics as understood by scholars, especially Zuhaili. This means that there is a tendency for the DSN-MUI Fatwa to lean more towards western ethics where in the legal norms of this decision it is more directed at the ultimate goal of implementing the *Murabahab* contract by LKS, namely to gain profit. So, in fact the DSN-MUI fatwa does not protect 2 interests, namely LKS and customers, but what is protected by the fatwa is only from the LKS side so that LKS should not be harmed or complicated by the implementation of *murabahab* buying and selling.

If we look at the theory of western ethics, then the DSN-MUI fatwa which aims for LKS to gain benefits refers to the ethics of Eudemonism originating from Aristotle which states that every human activity pursues a goal. So, the activity aimed at DSN-MUI is so that LKS is not harmed in the implementation of the *murabahab* contract, thus the fatwa only protects LKS.

Peter Mahmud, quoting Raban, said that equality before the law is not only a substantial principle in the judicial process, but also a substantial principle in legislation. Therefore, laws or legal regulations in any form, including DSN-MUI fatwas, must contain equal treatment for all people in the same situation and conditions (Marzuki, 2020).

Peter Mahmud further said that laws or regulations must be based on morals, what is external must not be contrary to morals. Laws should not be based on the doctrine of utilitarianism which relies on benefits. According to him, laws must provide protection to humans from harming their human integrity (Marzuki, 2020). Referring to this view, the DSN-MUI Fatwa should prioritize religious morals as the basis for its legal regulations that can not only protect LKS but also customers. Usury as a form of immoral action in sharia economics needs to be carefully examined so that the morals and integrity of LKS and customers can be maintained in accordance with Allah's will.

By paying attention to number 9 of fatwa Number 04/2000, we will actually automatically understand that what is traded by LKS is no longer goods but money. Because what is handed over to customers later is money. This means that LKS has traded money and this is a trade that is prohibited in Islamic law.

Zuhaili said buying and selling ribawi goods is permitted as long as it is done in cash and at that time. Selling gold for gold, silver for silver or money for money is permitted as long as the value and grade are the same. Therefore, basically it's fine as long as you don't sell the money in installments or installments. If this happens then it will fall into usury *nasiah* (suspension usury).

The next legal norm of the DSN-MUI fatwa is that the Bank purchases goods needed by customers in the name of the bank itself, and this purchase must be legal and free from usury. The formulation of this norm does not seem problematic, but philosophically it is actually problematic. Banks have a role as intermediary institutions. An intermediary institution is a party that acts as an intermediary between two parties that have different needs. In the context of LKS/banking, LKS acts as an intermediary between the Party that has excess funds (surplus) and the Party that needs funds (deficit). LKS only acts as a liaison between the party that has funds and the party that needs funds. Thus, LKS facilitates the flow of funds in the economy.

Those who have excess funds through the investment process either through savings, deposits, and current accounts. And those who need funds through a scheme in the form of credit. This credit can be used for various purposes, such as buying a house, vehicle, or business capital and others. LKS as an intermediary institution has a very important role in the economy. By connecting parties who have excess funds and parties who need funds, so that it can encourage economic growth and improve community

welfare.

By understanding this context, banks buying goods certainly violate the basic principle that Banks/LKS are intermediary institutions. Its main role is as a bridge for capital owners (excess funds) with those who need capital (lack of funds). Maybe for this reason, LKS anywhere we will not find that they buy goods to sell to customers. They only disburse a certain amount of money according to the needs of the customer, then the customer who buys his own needs of course using the murabahah contract and the wakalah contract.

It is in this context that the general provisions of number 9 regarding delegating to customers to purchase goods are used. By using the wakalah contract, the bank gives the customer the authority to purchase goods according to their needs. This means that the murabahah sale and purchase contract contains elements of multiple contracts (Harun, 2018).

Even though there are multiple contracts that are prohibited (such as prohibitions on buying and selling and lending), the general principle of multi-contract *al-mujtami'ah* is that it is permissible and the law of this multi-contract is justified by the law of the contract that builds it. This means that every muamalat that compiles several contracts is halal as long as the contracts that make it up are permissible (Harun, 2018). There is a multi contract model which is specifically prohibited by the hadith of Rasulullah which prohibits combining sale and purchase contracts with salaf (loan), *al-'inah* sale and purchase and sale and purchase at two prices (Harun, 2018).

By paying close attention to the legal norms contained in the fatwa on the murabahah contract as explained above. Then there are three contracts that are stated both explicitly and implicitly, namely the murabahah sale and purchase contract, the loan contract, and the wakalah contract.

The discussion above has reached a conclusion that Usury, murabahah trading, and Multi-akad as regulated in the DSN-MUI fatwa on murabahah are actually still very far from Islamic ethics. Usury that is understood is only usury that uses money/credit as known in conventional banking or known as interest. Thus, the ethical basis of the DSN-MUI related to usury is only to eliminate formal obligations by using the murabahah contract as the basis of sharia. In fact, substantively when the banking party, although it has been regulated in the legal norms of the fatwa to be required to buy goods and resell the goods to customers, but when the bank does not have factual ownership rights to the goods, it has actually fallen into usury.

In the view of western ethics related to buying and selling, selling money with money is not something that is prohibited. For the West with its Protestant ethics as understood by Max Weber, their main goal is in every economic activity, whether buying and selling, business or anything else that is important can generate profit, then it is not a problem. Buying and selling money in the western economic system is one of the most popular. The birth of the stock market and money market is one form of usury practice carried out by western economic practitioners. According to some scholars, paper currency itself is a tool of usury used by the west to colonize third world nations (developing).

Thus, by carefully observing the theological basis in the paradigm of Islamic ethics, the DSN-MUI fatwa related to murabahah which includes Riba, murabahah buying and selling, and multi-contract is closer to the understanding of capitalist ethics which is based on the understanding of liberalism. In the understanding of Protestant sects such as Calvinism, Pietism, methodism and The Baptist sect, for example, believes that everything is part of the sovereignty of God's kingdom, and because of this sovereignty of God, humans receive grace and are loved by God. They believe that religion needs to penetrate methodically in controlling and supervising the behavior of its people so that they are ascetic and perfect through the success of their work. This is a means to generate wealth, which is why someone might become religious with the aim of becoming rich. They practice a life of simplicity, honesty, and willingness to make sacrifices. Asceticism or frugal living makes humans appear as if they are in asceticism. Humans should adopt frugal living so that what they hope for will come true.

With this theological foundation, 3 main doctrines were born, namely, The Callingsay that the highest form of a person's moral obligation is to fulfill his obligations to the world to become rich, and the easiest way to

become rich is through other people's wallets. This is what Max Weber said in his book *The Protestant Ethic. The Doctrine of Predestination* also says that Humans are predestined before entering heaven or to hell. This is determined by whether or not a person is successful in his work in the world, thus resulting in the understanding that to enter heaven one must be rich, by any means including investing money through banks. And Worldly Asceticism believes that a lifestyle of restricted consumption combined with the pursuit of wealth, the inevitable practical result is the continuous accumulation of capital without having to work hard.

Based on the theological understanding and doctrine of capitalist ethics, although it may be somewhat exaggerated, it can be said that the ethical basis of the DSN-MUI fatwa in some aspects of *murabahah* is closer to the ethics of capitalism as explained above. This is certainly based on several characteristics and arguments such as the understanding of usury that is far from the understanding of the scholars, buying and selling that is only formally regulated to "trick" customers because the bank does not have goods to sell. And the use of prohibited multi-contracts, especially combining buying and selling and loan contracts.

That is why Max Weber said capitalism modern finance is promoter of large-scale speculators and as a concession seeker, even in peacetime. But above all, capitalism which is exclusively concerned with exploitation, capitalism bears this title even in modern western countries, although only a few parts of large-scale international trade are closely connected with it (Weber, 1993, p. xxxiv).

Then Max Weber quoted slogans commonly used by capitalism such as: 'Time is money, credit is money, and money is productive and productive. Money can produce money, and its offspring can produce more money, and so on. Five shillings turned into six, turned again into seven and three pence, and so on until it became a hundred pounds. The more money that is credited, the more production it produces. So profits increase and increase faster (Weber, 1993, p. 16).

Weber further explained, remember this proverb: A good payer is the master of other people's purses. After hard work and thrift, nothing contributes more to raising a man in this world than punctuality and fairness in all his affairs. Therefore, never keep borrowed money one hour beyond the promised time (Weber, 1993, p. 16).

Listening to what Max Weber said, it provides evidence that capitalism is an exploitative ideology where they use the slogan time is money, and credit is money as a tool to collect as much capital as possible. And using these doctrines, capitalism carries out looting everywhere using the instruments of capitalism.

Conclusion

Based on the discussion as mentioned above, in this study it can be concluded that the DSN-MUI fatwa on *murabahah* still contains elements of usury. This happens because in the fatwa there are legal norms that allow customers to buy goods themselves. While LKS provides cash but uses a *murabahah* contract. This is certainly the same as what conventional banks do with their financing. So, it seems that DSN-MUI is trying to bridge Islamic and Western ethics in bringing together meanings that can be accepted by the community about usury in *murabahah*. Therefore, the DSN-MUI fatwa on *murabahah* conceptually based on sharia perspective still contains elements of usury.

Based on the results of the discussion above, the suggestions put forward in this study are as follows: Further research is needed regarding the DSN-MUI fatwa on *murabahah*, especially aspects that are not yet clear such as Discounts, conversion of contracts, and others. This is so that a complete picture can be obtained, especially regarding its advantages and disadvantages without ignoring the principles of sharia in *murabahah*.

The DSN-MUI fatwa should not overly accommodate the interests of Islamic financial institutions, which I consider to be the same as conventional banking, namely seeking profit. The basic values of Islamic ethics in *murabahah* should not be ignored by these interests.

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