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## UNCOVERING *WASATHIYAH* VALUES ON SHARIA BANKING

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### ABSTRACT

*Islamic banking in Indonesia has a unique approach. Not only stricted by texts which are the source of rules, he also strongly considers the reality of society in Indonesia. Text and context also struggle to achieve benefit. Something that can only be achieved by the wasathiyah approach. This study aims to reveal the wasathiyah values contained in Islamic banking activities in Indonesia. The method adopted is qualitative design. Data obtained from the writings of Yusuf Al Qardhawi in Al-Wasathiyah wa al-I'tidal, fatwas of the National Sharia Council of the Indonesian Ulama Council (DSN-MUI) and various related literatures. As a grand theory, this research employes the wasathiyah theory by Yusuf Al Qardhawi. The data analyzed with Miles and Huberman's model and hermeneutics as the approach. As a grand theory, this research uses wasathiyah theory by Yusuf Al Qardhawi. An interesting finding states that wasaty has covered the right understanding related to the usury distinction between interest and profit and wages. Another interesting finding shows that uqud al murakabah that has been forbidden by the traditionalists in total, is also given an appropriate portion so that halal-haram can be classified*

### Kata Kunci:

*Wasathiyah, perbankan  
syariah, riba, multiakad.*

### ABSTRAK

Perbankan syariah di Indonesia memiliki pendekatan yang unik. Tidak hanya terpaku oleh *Nash* yang merupakan sumber aturan, ia juga sangat mempertimbangan realitas masyarakat yang ada di Indonesia. Teks dan konteks pun bergumul untuk meraih kemaslahatan. Sesuatu yang hanya bisa dicapai oleh pendekatan *wasathiyah*. Penelitian ini bertujuan mengungkap nilai-nilai *wasathiyah* yang terkandung dalam aktivitas perbankan syariah di Indonesia. Metode yang diadopsi adalah kualitatif desain. Data diperoleh dari tulisan Yusuf Al Qardhawi dalam Al-Wasathiyah wa al-I'tidal, fatwa-fatwa Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI) dan berbagai literatur terkait. Sebagai grand theory, penelitian ini menggunakan teori *wasathiyah* oleh Yusuf Al Qardhawi. Teknik yang digunakan adalah analisis data model Miles dan Huberman dengan hermeneutik sebagai pendekatannya. Sebuah temuan menarik menyatakan wasaty telah mengcover pemahaman yang tepat terkait dengan distingsi riba di antara bunga dengan untung dan upah. Yang tidak kalah menariknya, *Uqud Al Murakabah* yang selama ini diharamkan oleh kaum tradisionalis secara total, juga diberikan porsi yang sesuai sehingga halal-haramnya bisa diklasifikasi.

## INTRODUCTION

The striction of traditionalists in responding texts implies the stagnation in modern financial transactions. Banking, insurance, capital markets, money markets, and various other modern financial transactions which, despite being based on the fatwa of the national sharia council, did not escape the clutches of haram labels by them. Ordinary people are not increasingly enlightened by the opinions of these scholars, even more confused. Their views are always contradicting with *Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI)*. Their point of view tends to be forced to fit the logic of understanding their texts (Muzakka, 2018).

Islamic banking as an instance, even though it has been based on Islamic rules, in their eyes remains haram. Why? Because in the transaction, *uqud murakkabah* is adapted. Which in their view, this multicaid is haram in any form without considering the purpose of the prohibition and the realities of the underlying transaction. The same case was experienced by insurance, multi-level marketing and all other transactions that they indicated as *uqud Murakkabah*.

The wave of skepticism among traditionalists certainly affects a large part of society. With a slogan that assures the powerful "back to the sunnah", the community is rollicking as if boycotting Islamic financial products which have been based on fatwas and of course have passed a long discussion by our scholars. They assume the results of the DSN fatwa out of the sunnah, are not in accordance with sharia and violate the concept of Islam.

On the other hand, there are groups that actually do not consider the texts at all. They assume the text as irrelevant as a source of rules. *Nash* has been updated when juxtaposed with an increasingly advanced and diverse reality. For them, the substance is the reference, not the form. *Maslahah* must continue to be put forward despite the contradiction with the text. Bank interest is not unlawful if it benefits both parties. It's okay to speculate with risk as long as it's still at a safe point.

Responding to these two opposing poles, Sharia Banking in Indonesia through its National Sharia Board Fatwa presents a different approach. An approach that combines text and context. An approach that holds to divine command but does not neglect the reality of society. An approach known as *Wasathiyah* (Amin, 2014)

*Wasathiyah* is a word derived from Arabic which is a derivative of the word wa-sa-ta. This leads to several meanings such as welfare, medium, justice, kindness and mediation. In terms, the Ulama have given a certain definition to *wasathiyah*. According to Muhammad Qutb, *wasathiyah* means balance. For example, the balance between physical, mental and spiritual abilities, the balance between faith in the senses and belief in the senses that are invisible to the senses. According to Muhammad 'Imarah, *wasathiyah* means the truth between two falsehoods, and justice between two extremes, and the middle between two extreme angles (Dimiyati, 2017).

According to Yusuf Qaradawi, *wasathiyah* brought neutrality or simplicity between two opposing and opposing parties, where not only one party influenced and overthrew the other, and neither party did more than each other's rights. Among the examples of two. The opposites are the divine and human, the spiritual and the worldly, naqli and aqli as well as individuals and groups. Yusuf Qaradawi also defines manhaj *wasathiyah* as equality and simplicity in everything; in faith, worship, morals, warnings and law and far from excess (Al-Qaradawi, 2010).

In this case, the *wasathiyah* approach is the axis and balances the views of neo-zahiris, neo-muktazilis, neo-traditionalists and other schools while offering a middle ground in the interpretation of Islamic jurisprudence. The assessment of ancient turath does not mean that the ancient values of the salaf scholars are ignored and have no intellectual value. But this is an attempt to revive and revive their role in the same tradition but in different contexts. This is because the lives of most Muslims in this century have changed dramatically and differed from the lives of Muslims and the atmosphere of Muslims during thousands of volumes of fiqh books written and recorded. (Al-Qaradawi, 2010)

The Muhammad Al Madini Project is a scholar known as the founding father who gave birth to the idea of *wasathiyah*. His work entitled *al-Wasathiyah fi al-Islam* became the basic concept of moderate thinking afterwards. His concept is based on the concept of being he found from Surat Al Baqarah verse 143. The purpose of this work is to show the perfection and completeness of Islam and its ability to be a catalyst for the process of Islamic society. Inspired by the Al Madini style of caution approach, Al-Qaradawi made *Wasathiyah* as a tool for his da'wah struggle. The concept of *wasathiyah* is always present in the midst of extreme trends. Including during his struggle from the 1950s to the 1960s.

*Wasathiyah* is a unique approach. It has special features not found in other approaches. These features are inherent in this *wasathiyah* approach, and can distinguish them from other approaches, either too hard and too rigid, or too simple and justify everything. These characteristics of *wasathiyah* can be seen through the simple and balanced approach taken by this flow in dealing with the main issues. There are several basic principles that underlie this *Wasathiyah* school. This research seeks to uncover the values of caution contained in Islamic banking in Indonesia. This paper is expected to be able to counter the illicit labeling by traditionalists as well as express the skepticism of the liberals. This paper is expected to be a reference for Islamic economic activists to put forward their moderate values. This paper is also expected to be able to provide enlightenment for ordinary people who hit by two opposing poles.

## LITERATURE REVIEW

### *Wasathiyah Concept*

Among a number of observers about *wasathiyah*, the writer chooses the view of Yusuf al-Qaradawi. He considers to be a moderate figure, although he is not the first figure to initiate this concept. On the other hand, al-Qaradawi himself quoted the views of the previous ulama who took the *wasathiyah* approach. According to al-Qaradawi, the *wasathiyah* approach initiated by the previous Ulemas was present at every time and place. Because the logic of extreme right and left view is also present in every age and place. The cautious approach is always present as an intermediary between right-wing and left-wing conflicts. This mediator is expected to be a guide to Islam that is full of mercy and *salih li tabiatinnas* without ignoring the essence of the Qur'an and Al Sunnah. Among them are Shaikh Rashid Rida, Shaikh Mahmud Shaltut and Shaikh Mustafa Zarqa (Al-Qaradawi, 2010).

Al-Qardawi in principle is very anti-rigorous and static opinions, especially in addressing problems that have no definite proposition in religion. Unlike a group of people who when asked about music, chess, facial disclosure, they easily say haram. This is very different when juxtaposed with the attitude of the Salaf Ulama, they are not that easy to say haram, unless it is known for certainty. They just say we hate it, we don't like it or the same phrase.

It is said to be moderate because he does not claim anything is haram if there is no *Nash* who clearly shows his forbidden. In addressing the differences of previous scholars, he tends to choose the easy one, without the intention of playing with *Nash*. The facilities referred here which not contradict *Nash*'s legal and clear laws and regulations and do not conflict with certain shar'i rules.

To make it clear, He said, "In general, if there are two kinds of opinions in one issue, one is more careful and one is easier, while in those two opinions is based on clear *Nash*, then I prefer a fatwa that facilitates (Qardhawi, 1995).

Al-Qardhawi can be said to be a traditionalist ulama with moderate insight. It is said traditionalist, because in discussing religious matters he always refers to and considers the opinions of the previous scholars and makes a comparison between one opinion and another opinion, which is closer to the instructions of the Qur'an and the Hadith of the Prophet.

Ali Hasan An Nadwi, a contemporary scholar from India, described al qardhawi as a figure of ulama who combined classical knowledge in accordance with the spirit of the era of *al qadim salih* and useful modern knowledge as *al jadid nafi*. Methods which in practice can give power to two groups of people, which limit themselves with traditional knowledge on the one hand, and

who idolize modern religious knowledge on the other. Furthermore, An Nadwi explained that groups who understand traditionally with modern groups. What is said by traditional understanding groups cannot be digested by modern groups. Traditional groups are accused of being left behind in thought and unable to understand the problems of modern life. Al Qardhawi came up with a method that gathered both understandings (Jakfar, 2011).

Muhammad Salim Al Awwa said that all discussions of Al Qardhawi were carried out with Manjah *Wasathiyah* al Islamiyah, which is a fair and balanced method. Al-Qardhawi examines this issue deeply, fairly and objectively in the framework of the Qur'an and Al-Sunnah, does not come out of the maqasid and syariah principles, and still considers the instructions of the Salaf scholars. He rejects the liberalist's view that is too reckless to easily justify, and so does the view of the hadith expert who is too strict to forbid it. (Juhud dusuf al qardhawi fi khidmah al sunnahal nabawiyah) al qardhawi strongly rejects extreme and exaggerated opinions while at the same time denouncing the opinions of some Muslims who are too soft and ignore the teachings of their religion. Thus, what is meant by caution is a middle attitude between two extreme poles, between the views of the literalists and liberals. *Wasathiyah* is a school that combines the text and the meanings of the Shari'a, so that the case of Kulli and Juzi is not contradictory at all. A stream of attention to human interests by not ignoring Nash. An oriented school combines divine command with the demands of modern times (Jakfar, 2011).

In addressing the problems of the modern world, it seems that Al Qardhawi uses *ibtikar* (creative) and *ibtida* (creative). This method is the opposite of the method that is intended for obvious religious problems. A rule that is popular with the sound, "ittiba in amr din wa ibtida wa ibtikar fi amr al dunya. In terms of worship he is so committed to Nash, while in muamalah your purchase is more flexible, he tends to consider the wisdom, secrets and goals. Al asl fi al worship at taabud duna iltifat ila maani, wa ashl at al adat al iltifat ila al maani (al muntaqa min Kitab and al sunnah mashdaran.

Al-Qaradawi has put some of these principles in his works. Among these are included:

#### 1. Promoting *Fiqh Taysir*

The principle is easy to apply in determining fiqh law and fatwa issuance, when the principle of giving good news is also applied in the process of da'wah and giving warnings to the public. That is the meaning of *Fiqh taysir*. The *Wasathiyah* approach has always been the principle of facilitating and giving good news, everything that is built on the principle of *Wasathiyah* will undoubtedly be the principle of facilitating and giving good news. The principle of easiness here is meant to provide convenience in matters of furu', while in cases of proposals which are religious principles, the *Wasathiyah* sect takes a strict approach and in no way opens up space for convenience.

There are two forms of facilitating the determination of fiqh law. The first is to make things easier for fiqh to be understood by the public. This can be done in ways such as using easy language, using appropriate terms that can be understood by modern society, explaining the wisdom of making a legal statement and using modern writing methodology that is easily understood. When the second form is also facilitating the law of fiqh itself to practiced and practiced in life. This can be done by reconciling rukhsah, taking a lighter view instead of a more cautious view, narrowing the space of matters that are required and prohibited only to cases that are sickle with clear passages, and freeing themselves rather than fanatics to certain schools of thought (El-Muhammady, 2015).

#### 2. Combining between *Salaf* and *Tajdid* sides

Salafiah intends to return to the proposal and source of sharia law 'that is the Qur'an and al-Sunnah. When tajdid also intends to take context and reality into account during the course of time and free oneself from ignorance and blind taqlid. To get a simple approach, these two aspects need to be combined. This is because if we pay close attention, these two aspects are not at all contradictory, in fact they both play a role to complement each other. For example, Rasulullah SAW himself gave an explanation that this religion always experienced renewal and development.

The eternal nature of Islam is relevant throughout the ages and requires it to always interact with changing times and places (Dimiyati, 2017).

### 3. Middle between *zahiriyah* and *takwil*

Among the principles of *wasathiyah* flow is to take a middle stance between the stalling in understanding the literal passage with an attitude of expanding territorial space with certain restrictions. The flow of *zahiriyah* tends to understand something *syara nas'* from the literal aspect of understanding solely and ignores the *maqasid* aspects of the *nas* and its *ta'lil* aspects. This approach often leads to a narrow understanding of the passage and harsh legal decisions. They also dubbed *takwil* experts as *bid'ah* experts.

Another case with *takwil* expert groups. They sometimes neglect *nas* excessively by reason of maintaining *maqashid* and *maslahah*. This group tends to give a liberal opinion. They over-inflated the mind so that they considered opposing passages. *Wasathiyah* flow does not ignore *Nash* but is also not anti-*takwil* as long as it is based on certain relevant scientific disciplines (Amin, 2014).

### 4. Balance between *thawabit* (fixed) and *mutaghayyirat* (changeable)

*Thawabit* is matters relating to religion that are fixed and will not change. Examples are matters relating to faith, the obligation of *fardhu* worship, moral principles and theorems of *qat'i*. While *mutaghayyirat* is also a *furu* case, which may accept changes according to the context of the time. Examples are economics, medicine, agriculture and so forth. Therefore, the *Wasathiyah* approach combines these two aspects and balances them. An example is firm in the case of proposals and general principles when it is flexible in the case of *furu* 'and *juz'iyah*. Be assertive in religious values and morals when flexible in worldly matters (El-Muhammady, 2015).

### 5. Collaborating between *fiqh* and *hadith*

The *wasathiyah* approach promoted by al-Qaradawi lays down the principle in combining *fiqh* and *hadith* in solving various problems encountered. Every fatwa issued based on this principle will be contextual and very deep. Separation between *fiqh* and *hadith* will cause confusion in the process of determining the law. A *fiqh* expert who does not master the science of *hadith* will tend to rely on his legal decisions based on weak traditions and are not accepted as legal arguments. When a *hadith* expert who does not study *fiqh* may also issue legal decisions without understanding *maqashid* and *maslahah* will lead to distress and confusion.<sup>34</sup> Therefore explain the merging between these two sciences can lead to a firm and comprehensive legal decision (El-Muhammady, 2015).

### 6. Interrelating with the reality

Among the important *wasathiyah* approaches is to rely on something of that law to its true reality, by weighing between *maslahat* and harm that is manifested. Adjusting this reality is very important for taking a simple approach. This is so that a legal decision issued has a relationship with reality at a time and not just a fantasy. Therefore, several cases need to be considered so that the actions taken always coincide with reality. Among them is the understanding of the concept of changing the law because the changing conditions of the times and places (Bu'ud, 2000).

### 7. Particular to General Reason

Al-Qaradawi has always called for the understanding of the sharia text to be in accordance with sharia purposes. Negligence in understanding the *maqasid* of sharia will lead to a big mistake, namely the response that Islam no longer fits every place and age.<sup>37</sup> If it is understood in depth, actually there is not any contradiction in accepting a *juz'iy* passage and in the same period accepting the *syariah* *maqasid* framework comprehensive. This is because it has become the character of Islam itself that is every law required by Islam is aimed at the benefit of man himself. Thus, it is clear here that each *juz'iy* passage can be understood in terms of its overall *Shariah* intention without any arbitration (RI, 2019).

In this connection, the approach outlined by al-Qaradawi can be used as a basis for developing harmony in Islamic societies in Indonesia.

### **Maslahah, A Core Consideration to Adapt Wasathiyah**

Historical reality notes that there was a development in the theory of Islamic law (*usul fiqh*) in continuity in accordance with the times. Because Islamic law has a double standard, namely as a tool to measure social reality with shari'ah ideals that lead to halal or haram law and at the same time become a tool of social engineering. The development of legal theory undoubtedly occurs in line with the development of law in general, in accordance with the context of space and time. Therefore, renewal is a characteristic of Islamic law. One important and fundamental concept which is the subject of Islamic law is the concept of public interest or *maslahah* (Saputra, 2014)

The presence of Islamic thinkers who created new interpretations of Nash in the business of *istinbat* law turned out to get support from certain scholars. This indicates the awareness to accept changes and renewal of Islamic law in the field of *muamalah*, such as family, economic, social, political and state law through renewal of methodology and through rational consideration. Such courage will not only increase the role of Islamic legal studies in the field of *muamalah*, but also the *tabyin, tahdid, taqyid* and *takhsis* the provisions of *muamalah* law will experience a shift in the form of *tajdid al-hukm* and *tabdil al-hukm*. Consequently, it may be that what was considered public interest in the past is not necessarily considered *maslahah* at the present time (Rusdi, 2017).

As a unified whole, all human actions in an Islamic perspective must always be a triangular relationship: a vertical relationship with God (*hablun min Allah*) and a horizontal relationship between humans (*hablun min an-nas*).

If we are of the view that the law is merely social relations, such as Cicero's view that where there is a community there is a law (*ubi societas ibi ius*), then when someone gets lost to the high seas, because it does not belong to the jurisdiction of a particular country, then the person who the stray may do as he pleases, for example destroying biological resources. Different when using the view of Islamic Law (in accordance with the two relations above, namely the *hablun min Allah* and *hablun min an-nas*), even the open sea must have an owner (Allah).

The character of idealism, absolutism and the immortality of Islamic law are the implications of the postulation that Islamic law comes from God. However, what cannot be ignored from the characteristics of Islamic law is that the shari'ah contains general principles which are intended to be understood as an Islamic ethic and therefore, can lead to various interpretations. This is where shari'at can be placed as an "open texture", a norm structure that is written in a standard but open to interpretation.

God wants goodness and prosperity for his servants. Thus, a pious person must know the purpose of his Shari'a. No one should deny the wisdom and *maslahah* that is in the Shari'a.

In *I'lam al muwaqqi'in*, Ibn Qayyim said "the basis of the principle of sharia is the benefit of humans in the world and the hereafter. All Shari'a contain justice, mercy, benefit and wisdom. if *Maslahahs* turn justice into tyranny, mercy becomes harm, *maslahah* becomes *mudarat* and wisdom becomes evil, it is not considered as sharia (Al-Jawziyyah & Abi Bakr, 1973).

God will not make laws except for the benefit of humans. There is no Shari'a law which *qat'i*s wrong *maslahah* which is also *qaat'i*. if the person who created the Shari'a is the one who lowered the Shari'a, then it cannot be imagined that the thing prescribed is in contradiction with the benefit of man. Unless Allah does not know or Allah wants to be bothersome and constricting.

Furthermore, the above limitations if examined more deeply it will appear that all of them are mutually complete-complement each other in clarifying the understanding and nature of *Maslahah*. This relationship can be described as follows (Opwis, 2005):

- a. *Maslahah* is a *maslahah* that is not appointed by certain propositions about whether or not it is recognized.
- b. *Maslahah* must be in line and in line with the intentions of the Shari'a (Allah) in presenting the law.
- c. *Maslahah* in its realization must be able to attract *Maslahah* and reject *madharat*.

d. *Mashlahab* must be achievable and logically accepted by common sense.

Based on this description, it appears that the understanding of al-*Mashlahab* has a significant relationship with syari'ah in several formulations including: First, syari'ah is built on the basis of benefit and rejects any damage in the world and the hereafter, God gave orders and prohibitions on the grounds of benefit ; Secondly, shari'a is always associated with benefit, so the Prophet Muhammad encouraged his people to do good and avoid damage; Third, there is no possibility of a conflict between shar'ah and benefit; and Fourth, the Shari'a always shows the benefit even though the existence of the kemashlahatan is unknown, and Allah gives certainty that all the benefits that are in shari'a will not cause damage.

*Mashlahab* which is general, genuine, which supports the realization of the objectives of Islamic law, and which does not contradict Nash Shari'ah is a valid basis, footing and terms of reference for Islamic legal legislation. According to Imran Ahsan Khan Nyazee, scholars of Islamic jurists agreed that maslaha could be applied as the basis of legal provisions, and this *Mashlahab* could be used as a rationale when expanding the legal provisions to new cases. This is the basis of the *Mashlahab* doctrine (Rusdi, 2017).

From this the authors see that the birth of several laws and religious edicts prioritize *Mashlahab* as the first legal consideration. Or it can even be said, that the renewal of Islamic law to answer the polemic and problems of Indonesian fiqh is dominated by *Mashlahab* theory which is used as a knife of analysis in breaking the impasse of text interpretation. In realizing that, Yusuf Al Qardhawi in his approach always tries to associate Nash with reality.

### ***Fiqh Al Waqi: Associating Nash with Reality***

In the history of its birth, fiqh buildings often arise when humanitarian issues emerge and need to be responded to. Thus, the assumption of fiqh as a source of dynamism has its own relevance because it was born to respond to the dynamics of society. It is not uncommon for fiqh to be considered as one of the most concrete epistemology of revelation in direct contact with reality. The foundation of fiqh is not the same as the normative authority which is rising but also the appreciation of the objective reality on earth. In this connection, it is not surprising that the typology of the fiqh school in its historical background is always based on the context of its historical reality (Arif, 2018).

Hanafi schools, for example, appear with the performance of ratio analysis because the founding father was born and raised in urban areas who tend to think rationally even permissively. Therefore, he uses the proposition of qiyas more often than the text of the hadith which is sometimes doubted by its validity authority. On the contrary, the Imam Malik who was born and raised in the Medina Community who was establih, tended to develop traditional school formulas. The building of the Maliki school of thought, with such a formula, is the preservation of the practice of the ulama of the hejaz in a strong and established manner (Mufid, 2014).

The intersection of the text with reality has its own meaning. In fact, texts are born not in empty space. It appears often in the context of a constantly evolving reality. Historical reality also shows a dichotomy between the text and the reality of society. When legal problems occur in the community, the text of the Qur'an responds. Furthermore, if the text of the Koran is considered not to provide a detailed and adequate answer, the Hadith Text also goes up and explains the details of the problem that must be resolved. Thus, the existence of the Prophet at that time was positioned as a mediator between God's revelation and the reality of society. After the prophet's death the mediator position was continued by the companions, Tabi'in, Tabi, Tabiin, to the Ulama now. The struggle of the text with reality actually happened in the period from the prophet to the present.

Text and reality have a complementary relationship in the process of searching for the form of masalah as the ending or purpose of the creation of the Shari'a. So central was the position of the context of reality that Imam Al Qarafi, an Ulama in the Maliki School, forbade the granting of

a fatwa if the meter was contrary to local customs. In a rule also stated Al Adah Muhakkamah. Custom can give a verdict.

The reality context also lies behind the process of revelation. In the study of Al Quran and Al Hadith we know the theory of asbab Nuzul and asbab wururd. There is a nasikh mansukh that talks about changing the position of one verse to another. Tadarruj fi tasri if it is introduced to interpret the gradual establishment of Sharia. The selection mechanism known as al ta'rud wa al tarjih if there is a polarization of the text also colors the struggle. Theories of science such as this may not necessarily be able to solve the problem of the interaction of teks with context. But at least such knowledge can deliver our awareness of the importance of revealing the inern connection between the text of revelation and the sociological context of humanity.

If it can be simplified, there are at least three important elements that must be proposed to mediate the text and reality. First: mastery of the meaning and direction of the text produced. Understanding like this is important so that the reproduction of meaning that is born from a text does not shift from the basic framework of the meaning of sharia which is nothing but the benefit of the servant. Second: observation of social reality in which the legal community lives individually and in society. Understanding the social conditions of the Muslim community is necessary so that the application of a legal product does not reduce their own interests and benefits. Third: placement of the meaning of the text against reality. With this third element, a mujtahid is not only tasked with producing operational laws according to the necessary istidlal mechanism, but rather on how an ijihad product can be applied in the appropriate sociological context.

Historical facts have shown that Islamic jurists always pay attention to the reality of society in developing a pattern of legal discipline. This is understandable because the placement of legal findings in the context of reality is another form of application of ethical values that is highly recommended in Islamic teachings. Khalifa Umar bin Abdul Azis while serving as Gubernur in Medina was willing to give a legal ruling for the lawsuit if the plaintiff was able to present two witnesses or a saksi accompanied by an oath. The oath was intended as a substitute for another witness position. However, when he served the caliph who was domiciled in the country's capital at the time, namely sham. He was reluctant to provide legal provisions for the submission of the same witness formula. When asked about the change in stance, he replied: "We see sham as different from Medina"

Imam Abu Hanifah allowed to take legal decisions by submitting witnesses whose identity was unknown. He sees the justice aspect of a witness from his birth only. However, two of his students, Imam Abu Yusuf and Muhammad al Syaibani, were not permitted to give a legal ruling with testimony as above. What is considered by law is the reality of the community in the form of rampant lies during the time of the two students (Bu'ud, 2000).

Imam Shafi'i in his scientific wanderings had left his long listener which he had built during his time in Baghdad, Iraq. That opinion then changed to a new paradigm when he was in Egypt. So, in the Shafi'ite school, we analyze qaul qadim, as a presentation of his views in Baghdad and qaul jadid, a representation of qaul jadid. The difference between these two fiqh paradigms is inseparable from the influence of al-Shafi'i's observations on the reality of life in Iraqi and Egyptian societies.

At the time of the Companions, it was Caliph Umar bin Khattab often used legal provisions based on reality considerations. Like his reluctance to give alms rations to the converts, which is interpreted as a new group who embraced Islam and religious commitment is still weak. He views that the position of Islam is already strong. What used to be considered a convert was no longer considered because the illatnya was gone.

Reality as the main component of caution initiated by Imam Al Qardhawi is the main approach in raising maslahat. Nash's interpretation with consideration of reality must not be ignored because economic activity always undergoes renewal and development.

## **METHODOLOGY**

This study adopts a qualitative design with the Maqashid Syariah approach. The notion of maqashid sharia is based on Wasatiyyah theory by Yusuf Al Qardhawi. In wasatiyah theory, there



are many variants initiated by Yusuf Al Qardhawi. In uncovering the value of wasatiyah contained in the rules of sharia banking in Indonesia, this study chose the variant of *fiqh waqiah* as a scalpel. Data obtained from the Literature of Maqashid Shariah by Yusuf Al Qardhawi such as the book of *Fiqh Al Maqashid* and *Al-Wasatiyah wa al-I'tidal*. As a support, this research refers to the related journals and facts about sharia banking in Indonesia. The data in this study were analyzed using the Miles and Huberman model. In this model, qualitative analysis activities are carried out interactively and continuously. There are two stages in this data analysis technique. First, analysis at the time of data collection. This analysis aims to reveal the essence of the focus of the research to be carried out through the sources collected and contained in the verbal formulation of languages, this process is carried out aspect by aspect, according to the research map. Second, re-analyzing after the data has been collected in the form of raw data, which must determine the relationship with each other. Furthermore, the technique used in this study is to use a hermeneutic approach. Hermeneutics as a method of understanding. it is an activity of interpretation of objects that have meaning (full form) with the aim of producing objective possibilities. Reality of Indonesia sharia banking related usury and hybrid-contract is analyzed by the concept of wasatiyah.

## DISCUSSION

Back to disputes on dealing with Islamic financial products. On the one hand, the Indonesian Ulema Council has formulated a fatwa in accordance with its methodology and on the other hand traditionalist groups are still adamant with their opinions. Regardless of their views, the question now is whether the Al-Qardawi-style compliance approach in the fatwa formulation? To explain one by one, of course on this occasion has not been possible. But the authors try to focus on two main things and are often used as scapegoats in modern transactions.

### Usury; Does It Occur in Any Excess?

The word *riba* in English is defined as usury, which means interest rates that are more than usual or interest rates that are suffocating. Whereas in Arabic means additional or even small amounts of the principal amount lent. The meaning of usury technically according to the jurists is additional taking from basic assets or capital in a vanity both in debt and or buy and sale. *Batil* in this case is an act of injustice (*zalm*) or silence accepting injustice. The extra taking of vanity will lead to tyranny among economic agents. Thus, the essence of the prohibition of usury is the elimination of injustice and the enforcement of justice in the economy. In general, the elimination of usury can be interpreted as the elimination of all forms of economic practices that cause injustice or injustice. *Riba* should not only be understood and reduced to the issue of bank interest. But broadly usury can live latent or potential in an economic system that is discriminatory, exploitative and predatory, which means it can live in a subordinated, capitalistic, neoliberalistic and hegemonic economic system of imperialism, which cannot be limited from the banking aspect. *riba*) in Islam is expressly stated both in the Koran and the Hadith revealed gradually like the prohibition of *khamar*. In an economic perspective, the prohibition of usury is caused by at least four factors, namely: first, the *ribawi* economic system causes injustice. Because the owner of capital will definitely be able to profit without considering the results of the business run by the borrower. If the borrower of the fund does not make a profit or bankrupt his business, he still pays back the borrowed capital plus interest. Under these conditions, the borrower has gone bankrupt as if he had fallen on the ladder again and it is not uncommon to apply interest instead of helping the business of creditors, but it actually adds to the problem for him. This is where the injustice appears. (Tho'in, 2016)

Second, the *Ribawi* economic system is the main cause of its enactment imbalance between investors and borrowers. Large profits obtained by borrowers who usually consist of giant industrial groups (conglomerates) are only required to pay capital loans plus interest in a relatively small amount compared with the profits they get (Kalsum, 2014).

While savers in commercial banks consisting of people from the lower middle class do not get a balanced profit from the funds they have deposited in the bank.

Third, the Ribawi economic system will hamper investment because the higher the interest rate, the smaller the community's tendency to invest in the real sector. People are more likely to save their money in a bank because of higher profits due to high interest rates.

Fourth, interest is considered as an additional cost of production. High production costs will lead to rising prices of goods (products). Rising price levels, in turn, will invite inflation as a result of weak public purchasing power.

It can be said that usury is one of the great sins, which even the registrar in his transaction did not escape from the curse of the Creator. The author does not deny that usury is haram and must be eliminated (Tho'in, 2016). However, legal conclusions that are accessible in cyberspace which are based on an overly broad understanding of usury invite the author to comment a little. The widespread understanding of usury has implications for the prohibition of applying fines, the prohibition of admin fees for financial transactions and the prohibition of price differences on e-wallet transactions such as gopay and e-toll. The understanding of usury leads to their understanding of the hadith

كل قرض جر نفعا فهو الربا

“Any debt that provides more benefits is usury”

At first glance there are no problems with this Hadith. The author does not feel this hadith is at odds with understanding understanding. However, the term qard for them is not limited to borrowing money. But it also applies to all transactions that are. In their view, the qard is all transactions that have zimmah or dependents. This interpretation also makes the sale and purchase aqad that is not cash in nature is qard, payment for non-cash services including qard, even safekeeping is included Qard. Usury which is actually only revolved around the debts experience an expansion of meaning.

Simply put, usury is an improper advantage in transactions, both debt and credit transactions. The excess is said to be feasible if it comes from the profit and purchase profit margin, return on services, and profit sharing from the business. To understand usury, one must be concerned in understanding the logic of buying and selling, renting rent and profit sharing. This understanding cannot be separated from the hadith above.

Imposing fines for debtors who neglect to pay off their debts have rules in the DSN fatwa. Fines can be in the scope of punishment or takzir, can also be in the form of compensation or ta'widh. Debt that is not paid at maturity can hurt the lender. On the basis of *لا ضرر ولا ضرار* fines here serve as punishment for those who are able to pay off debts but neglect to do so. Fines are preventive measures for the borrowers' welfare. It is also a protection tool for lenders. We can apply the same argument to fines as compensation. At first glance, this fine is the same as usury jahiliyah. Both are fines for late payment of debt. However, if examined deeper, there are differences in criteria. Jahili usury is a fine charged without seeing the benefit of the debtor. This means that the ability of the debtor is not taken into account at all. In addition, fines in usury ignorance is an effort to make a profit. It can be concluded, ignorance jahiliyah only pay attention to the benefit of the creditor and is very wrong the debtor. The fine set by the DSN fatwa is more to prevent debtors who are able to pay off their debts immediately. He did not mean this fine as an advantage for the creditor. it is only limited to compensation suffered in real terms or as a social fund (Wahyudi, 2017).

As for the discounts, we can categorize him as a gift. Gifts themselves do not have special rules. As long as you are willing to be willing, like and like and be happy. Even if we want to make an issue with it, we can discuss it further in the intention chapter. But again, he was not included in the category of usury.

Once again, the author emphasizes, usury remains unclean. Hadith above is also the author amini. But with a qardawi-style caution approach, the writer tries to put Nash into his proper place. By paying attention to illat and adjusting reality, the understanding of usury does not contradict human nature, does not contradict the will of the Shari'a as the benefactor.

### ***Uqd Al Murakkabah; The Root of Prohibiting Banking Transactions***

Since 1992, through the Muamalat bank, Indonesia finally adopted a dual banking system. This system allows for the existence of Islamic banking, apart from the conventional banking system which first existed. Over time, discordant voices began to arrive. One of them is who doubts his sincerity. Various arguments have been raised to interfere with its existence, ranging from usury, high prices, to the use of controversial contracts such as *uqud al murakkabah* (Aryanti, 2017)

*Uqd al murakkabah* is the gathering of several contracts in one transaction by collecting or exchanging in which all rights and obligations of the contract are considered as the legal consequences of one transaction. (Al-Imrânî, 2006) As a result of the law can not be separated based on the contracts that build it.

Included in the category of *uqd al murakkabah* is the gathering of several contracts in one transaction as applied in modern Islamic finance and contract terms for other contracts. Examples of contracts that are included in the category of *al-murakkabah uqd* include *murabaah*, sharia letters of credit, sharia cards, *mudhârabah musytarakah*, and *musyâarakah mutanâqishah*. Hammad included *al-ijârah al-muntahiyah bil-tamlîk* (IMBT) in the category of *uqd al murakkabah*. *Murâbahah* according to Bank Indonesia is a transaction of buying and selling an item at the acquisition price of the goods plus a margin agreed upon by the parties, where the seller informs the buyer's advance price. This understanding is the same in *fiqh*, namely buying and selling at a price more than the first sale and purchase price. The parties to the agreement are the seller and the buyer. The *murabaha* applied in Islamic banking institutions is a combination of two buying and selling and promises. The first sale and purchase between Islamic banking and the providers of goods and the second sale and purchase between customers and the bank (Susanto, 2016).

The customer orders a certain item from the Islamic bank and then the Islamic bank purchases the item from the goods supplier. The next stage Islamic banks sell these items to customers at an acquisition price plus an agreed profit. Both Islamic banks and customers promise to buy goods according to the order.

Islamic banks can sell these goods after the goods are owned by banks. The two sale and purchase agreements and promises are carried out in one transaction and are not separate. The legal impact of the transaction is one, namely the transfer of buying and selling objects from Islamic banks to customers. Thus, the *murabbah* contract belongs to the category of *al-murakkabah uqd*. Another form of the use of *uqd al murakkabah* can be seen from the *mudhârabah musytarakah* combination product used in Islamic banking. In this contract combination, Islamic banking institutions that act as *mudhrib* for funds submitted by customers (as *shâhib al-mâl*) include their capital to be invested in third parties (*mudhrib*). The parties involved are customers, Islamic banking, and fund managers. In this contract Islamic banking will get double benefits as *mudhrib* and *shâhib al-mâl*

The authors admit, *uqd al murakkabah* cannot be separated from the world of banking. The bank cannot be a buyer nor can it be a seller. But the needs of sharia require so. The bank must have a real business. No longer looking for benefits through spread based. Without sales and purchases, a real business is not possible. Therefore, banks must partner with other parties. This is where the bank carries out its function as a financial intermediary. Like it or not, *uqd al murakkabah* must be implemented (Aryanti, 2017)

The author tries to give an illustration, someone, say hasan, wants to own a house. He did not have enough money to buy it in full. The bank provides assistance with installment sales. In this case, the bank clearly does not have a home. Where can he sell the house? Of course, with its partners. The bank first bought the house in cash, then sold it in installments to Hasan. Is there *uqd al murakkabah*? Of course. Is it Haram?

Previously, allow the author to raise the hadith of *uqd al murakkabah* prohibition.

نهى رسول الله عن صفتين في صفقة

Rasulullah saw forbid 2 transaction

The meaning is clear right? but, this is the same as the previous usury case. We must try to put Nash in the appropriate realization. To elaborate this, of course we must first agree on the urgency of banks in a country. Then, can bank act as the seller and not as an intermediary? The

author himself in this case, asserts that we can not be separated from the world of banking. It has become one of the main joints in the survival of our country. Second, banks cannot be buyers and sellers actually. The money in the bank must be liquid and keep flowing. The money in the bank does not belong to the bank. The owner must always stay liquid. If money transform to goods, the liquid nature of the bank disappeared. It is this balance that the bank must always guard.

If the meaning of the hadith above is only limited to textual, of course it will contradict the reality above. This Hadith is no longer valid in one era and place. Therefore, understanding *uqd al murakkabah* must be brought into the proper domain.

In this case, the writer quoted Nazih Hammad's understanding in his book entitled "العقود المركبة في الفقه الإسلامي" revealed the essence of *uqd al murakkabah* prohibition as follows (Hammad, 2005; 2018, عواودة & سمير):

1. Not a condition that removes someone's pleasure
2. Not part of Hiyal for usury
3. Not part of Zariat for usury

Al Imrani gives a limit to the murqabah uqd which is permissible. The limits of uqd al murakkabah according to him are not related to matters that are prohibited from sharia, does not conflict between one contract with other contracts, uqd al murakkabah does not bring (result) to the unlawful, uqd al murakkabah must not be between contracts that are interchangeable with virtuous contracts (Al-Imrânî, 2006)

The fixed aspect is the maintenance of wealth. The benefit gained by accommodating the ability of uqd al murakkabah is when economic practitioners can apply sharia according to the times. With this application, sharia business sectors are encouraged to develop and include. Conversely, if uqd al murakkabah is not allowed, then the business sectors with the sharia system may experience difficulties / constraints (mudlarah).

Then the changing aspect (mutaghayyirâh) is the aspect of the way, namely the Prophet Muhammad forbade uqd al murakkabah, while DSN-MUI allowed the condition that the implementation of the al murakkabah uqd pay attention to the specified standards so as not to contain obscurity (jahâlah), manipulative uncertainty (gharar) and ribâ. In other words, DSN-MUI allows uqd al murakkabah while avoiding ribâ, jahâlah and gharar

Apart from the adverts, the author actually does not question the terms in a transaction as long as these conditions do not justify the unlawful or vice versa. Terms that damage the pleasure of someone author analogy with it. Someone who is not happy or forced, his contract is not valid, so that the conditions that make people not happy are not allowed automatically. The author again provides an illustration. Someone who wants to buy a bag, but the seller will only sell the bag if pens and books also have to be purchased. Here is *uqd al murakkabah*. Bag sales and book pen sales. Sales of pens and books are a condition of other sales. Such requirements certainly tarnish the willingness of the buyer. Buying and selling is not based on pleasure.

The second and third points are the cases of hilah and zariat. The author summarizes it in the discussion of selling and buying Inah. Buying and selling is a trick that makes buying and selling a cover for debt transactions. I demonstrated this. Someone needs money, he is trying to find a loan. By the Bora, he provides an alternative. He will give money through the buying and selling process. Bora gives money as purchases of goods. He gave the cash in accordance with needs. Without experiencing a transfer of ownership, the item is sold to the original owner at an installment price. *Uqd al murakkabah* occurs in this transaction.

*Uqd al murakkabah* in this transaction is one that leads to harm. *Uqd al murakkabah* in this case is used to do contract engineering. Trying to overcome selling and buying, but what happens is the debt transaction accompanied by interest. Neither party wants the merchandise. The seller only wants the money, while the buyer wants to profit the difference in payment.

Obviously the *uqd al murakkabah* prohibition in the two illustrations above. Both show actions that are qat'I forbidden in transactions, coercion and usury. This understanding does not neglect the passage, according to salaf views such as Aimmah Arbaah and does not come out of

the maqashid corridor. It is not wrong if the cautious approach continues to be applied. Because with a cautious approach, we remain grounded in the law of God that is *matlu* (relevated) and *marwi* (narrated) while continuing to position it in the maqashid's frame until it is valid at every time and place.

## CONCLUSION

The idealism of the traditionalists leads to stagnation in things which naturally must continue to develop such as the economy. Nas's understanding which is only fixated on the *zahir* gives birth to rigid legal rulings and even tends to be inhumane. This fact is sometimes exacerbated by intolerant attitudes towards different views. On the other hand, there are people who are too ignorant of reason so that opposition to it must be ignored even if it is the order of the creator. Al Qur'an and Al Sunnah must always be the basis of Muslim thinking and be a source of living rules. The diversity of circumstances, the changing of space and the passage of time require a balanced understanding of Nash so as not to get out of his maqashid corridor. Al Qardawi's style of caution approach can be used as a reference as the example in the above writings.

Usury by the traditional includes all the advantages of exchange, whether in the form of buying and selling, wages, discounts and even fines are understandings that do not consider realities. The struggle between the text and the context needs to be put forward to achieve *maslahah* which is the goal of the Shari'a. Uqd Murakkabah which is understood literally will be contrasted when juxtaposed with the nature of modern transactions that can not be released. Therefore, applying it proportionally is a more suitable way.

It is hoped that in this study, ordinary people are not only focused on the literalist views that tend to be rigid and old-fashioned, nor do they totally ignore the guidance of religion because it is considered not in accordance with the spirit of the times. This research is also expected to be able to be used as a reference to the formulator of the fatwa always prioritizing the interaction of Nash and reality to ensure the achievement of the problem.

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