


ECONOMICS ETHICS IN THE FATWA OF ISLAMIC ECONOMICSView metadata, citation and similar papers at core.ac.ukbrought to you by  **CORE**

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Abstract

The fatwa by the National Sharia Board (Dewan Syariah Nasional/DSN) of Indonesian Ulama Council (Majlis Ulama Indonesia/MUI) and The Sharia Advisory Council of Central Bank of Malaysia/Bank Negara Malaysia (BNM) on Islamic economics is dominated by its ethical aspects. The prohibition of riba (interest), for instance, is an Islamic ethic which is mostly set in both institutions. In this case, the Legal consideration contains more ethics than fatwa verdicts. The ethics in the legal consideration is commonly based on the basic ethical principles of The Noble Qur'an, the hadith and the Islamic jurisprudence. In the meantime, the ethics for the object of contract in DSN is mentioned more in the fatwa verdict than in their legal consideration while the ethics for contract performer is equally found in both areas. This thesis is discovered by reading the DSN's fatwa from 2000 to 2010 and the MPA's fatwa from 1997 to 2010. Once identified, the ethics in both institutions is classified into a particular category. As the result, this research generates a great implication on the dominant aspect of Islamic ethics in its legal formal.

Fatwa Dewan Syariah Nasional (DSN) Majelis Ulama Indonesia (MUI) dan Majelis Penasihat Syariah (MPS) Bank Negara Malaysia (BNM) tentang ekonomi syariah didominasi aspek etika Syariah. Larangan riba merupakan etika syariah yang paling banyak ditetapkan dalam dua fatwa tersebut. Bagian konsideran hukum lebih banyak memuat etika ketimbang bagian putusan fatwa. Etika dalam konsideran hukum umumnya menyangkut prinsip-prinsip dasar etika yang bersumber dari Alquran, hadis, dan kaidah fikih. Etika untuk objek akad dalam fatwa DSN lebih banyak disebutkan pada putusan fatwa dari pada konsideran hukumnya. Etika untuk pelaku akad dalam fatwa MPS ditemukan hampir seimbang dalam konsideran dan putusannya. Tesis tersebut ditemukan melalui pembacaan terhadap fatwa DSN tahun 2000-2010 dan fatwa MPS tahun 1997-2010. Setelah diidentifikasi, etika-etika yang terdapat dalam fatwa DSN dan MPS dikelompokkan dalam kategori tertentu. Penelitian ini berimplikasi pada kuatnya aspek etika syariah yang dominan pada sisi legal formalnya.

Keywords: Ethics, prohibition of *riba* (interest), Islamic economics, Legal Consideration, Fatwa Verdict

A. Introduction

The growth of Islamic economics institutions is not comparable with the philosophy of the existence of an alternative economic system. The Islamic economics was first introduced as an effort (*ihitiyar*) to reduce poverty, create jobs and improve wealth distribution system. Practically, it loses its progressivity and power move to overcome poverty and Islamic Economic movements are further away from their underlying philosophical values.

Saeed argues the practice of Islamic banking is no longer compatible with the ideals of their establishment. It is seen from profit-sharing system and partnership through *muḍârabah* (profit-sharing) and *mushâarakah* (partnership) which initially became the idea of Islamic banking but is neglected in the end. Essentially, both systems are likely to stir real sectors and create jobs considering that in one side they necessitate the jobs existence as the most important factor of production and in another side labor and production are the core of economic system to maintain welfare.¹ Due to the great risks in both systems, the Islamic banking tend to stay away and turn to another system known as *murâbahah* transaction.²

Although the Islamic banking claims to avoid *riba*, according to Siddiqui, debt-based financing still occurs and the bank guarantee for its customers provide a stable profit.³ Consequently, according to Lewis, there is no significant difference between Islamic and conventional banks because sharing system is not widely applied.⁴ The board of supervision and fatwa is not justified to simply agree on the interests of the Islamic financial institutions (Lembaga Keuangan Syariah/LKS) to approve their proposal by ignoring law, using legal excuse and supporting their interests.⁵

¹ Yûsuf al-Qaradhâwy, *Dawr al-Qiyam wa al-Akhlâq fi al-Iqtisâd al-Islâmî* (Kairo: Maktabah Wahbah, 1980), p. 146.

² Abdullah Saeed, *Menyoal Bank Syariah: Kritik Atas Interpretasi Bunga Bank Kaum Neo-Revivalis*, 1st edition, translated by Arif Maftuhin (Jakarta: Paramadina, 2004).

³ Shamim Ahmad Siddiqui, "Establishing the Need and Suggesting a Strategy to Develop Profit and Loss Sharing Islamic Banking", *Journal of Islamic Economic, Banking, and Finance*, Vol. 6, No. 4, (2010), p. 29.

⁴ Mervyn K. Lewis, "In What Ways Does Islamic Banking Differ From Conventional Finance?", *Journal of Islamic Economic, Banking, and Finance*, Vol. 4, No. 3, (2008), p. 9.

⁵ Rafiq Yunus al-Misri, "'Amal al-Fuqahâ' lada Rijâl al-Amwâl wa al-A'mâl", *Journal of Islamic Economic, King Abdulaziz University*, Vol. 21, No. 1, (2008), p. 63-64.

The system of Islamic economics which firstly appeared around 1970s⁶ is believed to be an alternative and a solution to overcome economic issues.⁷ Many Muslim economists believe it is not merely an option but a solution and the prospect of this so-called religion-based economics system is bright and grows rapidly.⁸ Its rapid development is supported by the collapse of the socialist economic system along with the collapse of the Soviet state and the failure of the capitalist economic system in responding to economic issues.⁹

In contrast to conventional economics system, Islamic economics bases its philosophy on faith, the principle of balance in meeting worldly and religious needs, not in focusing a mere pleasure, the principle of wealth distribution and a support for the poor by creating jobs.¹⁰ In addition, it is considered as divine, morality, humanitarian and middle class-based economics.¹¹ In this regard, the ethics of divinity, humanity, cooperation and justice is an important part of the

⁶ This year refers to Islamic economics as institutional sense by the birth of the first banks with *riba*-free, Mit al-Ghamr in 1963 and the Islamic Development Bank (IDB) in 1974. Indeed the Islamic economic idea has been around since the days of classical Islam. Al-Ghazali, Abu Ubaid, Ibn Taymiyyah and others have contributed their thoughts on Islamic economic in their time. See Sudin Haron, *Islamic Banking, Rules and Regulations* (Malaysia: Lemur Publications, 1997), p. 2-4.

⁷ This assumption is believed by many Muslim economic thinkers including Taqiuddin al-Nabhani in his book *al-Nizām al-Iqtishād fī al-Islām* published in 1990 by Dar al-Ummah, M. Umer Caphra in his book *The Future of Economic: An Islamic Perspective*, published in 2000 in the United of Kingdom. See also Fikri Ahmad Nu'man, *Al-Nazariyyah al-Iqtishādiyyah fī al-Islām* (Beirut: Al-Maktab al-Islami, 1985).

⁸ Ismail Yusanto, for instance, forecasts the growth of Islamic economic to improve along with the presence of several contributing factors, such as the collapse of the socialist economic system, the growth of Islamic financial institutions in various countries, the growth of educational institutions and Islamic economic studies and the increasing awareness of the people along with the development of Islamic economics discourses in various channels. See Ismail Yusanto and M. Arif Yunus, *Pengantar Ekonomi Islam* (Bogor: Al-Azhar Press, 2009), 1st edition, p. 2-11. See also Veithzal Rival and Andi Buchari, *Islamic Economic, Ekonomi Syariah bukan Opsi, Tetapi Solusi*, 1st edition, (Jakarta: Bumi Aksara, 2009).

⁹ See Adiwarman A. Karim, *Ekonomi Islam Suatu Kajian Kontemporer* (Jakarta: Gema Insani Press, 2001); Afzalur Rahman, *Doktrin Ekonomi Islam* (Yogyakarta: Dana Bhakti Wakaf, 2001); M. Umer Caphra, *The Future of Economic: An Islamic Perspective* (United of Kingdom: Islamic Foundation, 2000).

¹⁰ See M. Fahim Khan, *Essays in Islamic Economic* (United Kingdom: The Islamic Foundation, 1995), 5-11; Veithzal Rivai and Andi Buchari, *Islamic Economic*, p. 110-160.

¹¹ Yûsuf al-Qaradhâwy, *Dawr al-Qiyam*.

foundation of Islamic economics.¹² The Islamic economics maintains a balance between individual and social interests, between this world and the hereafter and between wealth and charity. As the result, this ethical and moral foundation is what makes the Islamic economics distinctive from other systems.¹³ Unlike the capitalist, socialist, welfare-based state economic system which abstains from morality, the Islamic economics system offers religious ethics. Syed Nawab Haedar Naqvi believes that this ethics-based economics system becomes the main character of Islamic economics.¹⁴

The issues are whether the fatwa of Islamic economic has been adequate in incorporating Islamic economic ethics and which economic ethics is applied in the fatwa in either legal consideration or legal decision. This study aims at revealing the application level of Islamic economic ethics in the Islamic economic fatwa in Indonesia and Malaysia and identifying the ethics which is considered as the fatwa.

To answer these issues, the study applies library research approach which is used to identify and map the principles economic ethics applied in the Islamic fatwa in Indonesia and Malaysia. The fatwa in Middle Eastern countries especially Kuwait is used as supplementary material. Methodologically, this research is classified as descriptive study which is intended to systematically, factually and accurately depend the Islamic economics ethics on the Islamic fatwa in Indonesia and Malaysia.¹⁵

The data resource in this study is classified into primary and secondary resources. The primary resource derives from the fatwa by National Sharia Board (DSN) from 2000 to 2010 with a total of 78 articles and the fatwa by the Sharia Advisory Council of Bank Negara Malaysia (SAC) from 1997 to 2010 with a total 100 articles (the second revised edition). The DSN is an institution established by the MUI to deal with Islamic economics issues.¹⁶ Institutionally, the DSN is an autonomous institution under the MUI and its fatwa existence is recognized by the Constitution 21/2008 in terms of Islamic Banking and the Constitution 18/2008 in terms of Sharia Securities (Surat Berharga Syariah Negara/SBSN).¹⁷ Like DSN, the Sharia Advisory Assembly (Majelis Penasihat

¹² Khursid Ahmad in Syed Nawab Haider Naqvi, *Menggagas Ilmu Ekonomi Islam*, 1st edition, translated by M Saiful Anam and M. Ufuqul Mubin (Yogyakarta: Pustaka Pelajar, 2003), p. ix.

¹³ Yûsuf al-Qaradhâwy, *Dawr al-Qiyam*, p. 23.

¹⁴ Syed Nawab Haedar Naqvi, *Menggagas Ilmu Ekonomi Islam*.

¹⁵ Husaini Usman dan Purnomo Setiady Akbar, *Metodologi Penelitian Sosial*, 4th edition, (Jakarta: Bumi Aksara, 2003), p. 4.

¹⁶ DSN dan BI, *Himpunan Fatwa Dewan Syariah Nasional MUI*, Vol.1, (Jakarta: DSN dan BI, 2006), p. 420.

¹⁷ For example, in article 32, paragraph 2, the Constitution 21/2008 on Islamic Banking, it is explained that the DPS appointing is by a recommendation from the MUI.

Syariah/MPS) is an institution under Bank Negara Malaysia (BNM) management. It is authorized to issue Islamic economics fatwa and is legalized by BNM Act 1958, section 16B (1). Although it is under BNM, its position acts as an independent institution.¹⁸

In the meantime, the secondary data are obtained from some literatures related to the study. The study applies documentation technique to collect data regarding the concepts of fatwa and Islamic economic ethics.

The process of data analysis starts by grouping the fatwa into two categories; Islamic banking and non-bank financial institutions. After the grouping, the fatwa are then analyzed in terms of principles and ethics existing in legal consideration and fatwa verdict. Some of the ethics are explicitly and implicitly mentioned such as the term 'justice'. Furthermore, the principles of ethics are quantified to determine the level of their use as basis of Islamic economics fatwa and are then sorted based on their frequency to be mentioned in the fatwa.

B. The position of Economic Ethics

Abdullah Saeed questions the Islamic aspects of Islamic economics that exists nowadays. Some studies conducted in various countries have proved the existence of misunderstanding on equating interest with *riba*, the shift in the ideals of Islamic banking establishment and rules which are applied in Islamic banking differ from those in classical jurisprudence.¹⁹ The same criticism comes from Zaim Saidi and Imran N Hosein. According to Saidi, he questions the use of banknotes in Islamic banking in which he thinks as a source of *riba* practices. Both Zaim and Imran offer replacing banknotes into the *dinar* and *dirham*.²⁰

At the conceptual level, the Islamic economics is seeking for the ideal system. According to Syed Nawab Haedar Naqvi, ignoring the modern science from the Western world is naive because it is impossible to create Islamic economics which is entirely new. The economics is built on the principles of *sharia* (at the philosophical level) -which are distinguished from secular conventional economic- and economic behavior of Muslim communities at the level of practice (positivistic).²¹

¹⁸ Bank Negara Malaysia, *Guidelines on the Governance of Sharia Committee for the Islamic Financial Institution*, (Malaysia: BNM, 2002), p. 1.

¹⁹ Abdullah Saeed, *Menyoal Bunga Bank*.

²⁰ Some of Zaim's works include: Zaim Saidi, *Lawan Dolar dengan Dinar* (Jakarta: Pustaka Adina, 2003); Zaim Saidi and Imran N. Hosein, *Tidak Islamnya Bank Islam: Kritik Atas Perbankan Syariah* (Pustaka Adina, 2003).

²¹ Syed Nawab Haider Naqvi, *Menggagas Ilmu Ekonomi Islam*, p. ix.

In fact, the integration of Islamic norms with a modern economy is dominated by jurisprudence aspect (legal formal). The today's Fatwa as the single standard of Islamic economics is characterized by *halal-haram*, acceptable-unacceptable and legal-illegal in responding to economic activities. In this case, it does not really consider the ethics of Islamic economic, whereas ethics is fundamental aspect of economics. Consequently, the principles of divinity, justice, cooperation, trust and humanity do not stand out in the fatwa of Islamic economics.

Ethics is defined as moral, etiquette, morals, norms, rules of conscience, courtesy, manners, values and alike. Etymologically, it is a discipline that describes good or bad, duty or moral obligation, or a set of principles or moral values.²² it derives from the Greek word *ethos*, in the plural form (ta etha), which means custom or habit. In this case, it is related to values, good way of life, good rule of life and all the habits adopted and passed on from one person to another or from one generation to another. In a firmer meaning, it is a systematic study of the nature of the concept of value, good, bad, 'must', right, wrong and so forth and of general principles that justify us to apply it on anything. Ethics, according to Ahmad Amin, is a science that describes the meaning of good and bad, explains what a person should do to another, states the purpose of life addressed by humans in their actions and points which way they should take. K. Bertens understands ethics as a science which explains what to do or as knowledge about local customs.²³ In addition, it can be defined in three terms; first, it is used in terms of value and moral norms which control the behavior of a person or a group. Second, it is understood as a set of principles or moral values or code of ethics. Third, it is the science of good and bad.²⁴

The study of ethics covers all fields including economics. Ethics and economics share close relationship concerning norms or legal-illegal actions in economics activities. According to Sjafruddin Prawiranegara, as quoted by Dawam Rahardjo, economics means the same in terms of a science or an activity. The only difference between one economics systems to another is its economics ethics. It means economics and economic practices are essentially the same although they are in different settings, but economics is different from the aspect of moral values that builds it. The economic ethics in Islam may be different from other economic ethics from other religions.²⁵ The difference of ethics starts from the source and methodology of ethics itself. According

²² Sofyan S. Harahap, *Etika Bisnis dalam Perspektif Islam* (Jakarta: Salemba Empat, 2011), p. 15.

²³ K. Bertens, *Pengantar Etika Bisnis* (Yogyakarta: Kanisius, 2005), p. 4.

²⁴ Sofyan S. Harahap, *Etika Bisnis*, p. 17.

²⁵ M. Dawam Rahardjo, *Etika Ekonomi dan Manajemen* (Yogyakarta: Tiara Wacana, 1990), p. 1.

Bertens, economics ethics is a thought or reflection about morality in economics. Morality means good or bad, commendable or reprehensible and therefore allows or does not allow human behavior. It is always related to what humans do including economic activities. The previous thinkers have analyzed the relationship between ethics and economics. Later, the economic ethics turn into a serious study in various parts of the world. The ways of positivistic economic study per se are no longer adequate nor capable of responding the challenges of today's global economic issues. As the result, the economics is unlikely to separate itself from the aspects of ethics.²⁶

The economic ethics is to be studied considering the economic development ignores the ethics aspect. Critics to economics have been addressed by many parties. The economy is not able to lead to the desired welfare and justice. Ironically, it brings poverty and widens the gap between the rich and the poor. Such circumstances happen as a result of the economy which ignores the ethics aspect. In this regard, Economic ethics is important to learn for three reasons. First, embedding or increasing awareness of the ethical dimension in economics and business. Second, introducing moral arguments, especially in the economics and business field and supporting economics and business players to maintain proper moral arguments. Third, supporting economic and business players to determine proper moral attitude of their profession.²⁷

Islamic economics is designed to realize the ideals of Islamic teaching, namely to meet the objectives of Sharia (*maqâsid al-shari'ah*). The most basic purpose of Sharia is the achievement of welfare and protection for the five basic principles (*al-daruriyyat al-khams*). These five basic principles include protection for religion, life, intelligence, lineage and wealth.²⁸ To realize these principles, the scholars have formulated the foundation of Islamic economic which consist of four aspects; *tauhid*, caliph, justice, freedom and responsibility.²⁹

Drawn into the context of fatwa, economic ethics will be more prominent than meso and micro aspects. The meso aspect of ethics is related to Islamic financial institutions while the micro aspect is associated with contract arrangements or the relationship between customers and the Islamic financial institutions. Nevertheless, a macro aspect might also appear in the fatwa considering that the fatwa sets the general economic policy. To this end, the

²⁶ K. Bertens, *Pengantar Etika Bisnis*, p. 6.

²⁷ K. Bertens, *Pengantar Etika Bisnis*, p. 32-33.

²⁸ Amiur Nurrudin, "Kesejahteraan Sejati dalam Perspektif Ekonomi Islam", *Tsaqafah: Jurnal Peradaban Islam*, Vol. 3, No. 1, (2006), p. 97.

²⁹ See M. Umer Chapra, *Islam dan Tantangan Ekonomi* (Jakarta: Gema Insani Pres, 2000), p. 204.

economic ethics in the fatwa may explicitly be found but it seems that ethics appears implicit and further needs to be explored.

Fatwa is currently a single Sharia standard for measuring Islamic economic practices. However, it has undergone a shift. If, theoretically, it does not bind, but in *de jure* and *de facto* it surely does. Practically, some fatwa issued by DSN and MPS bind Islamic financial institutions although the binding process is authorized by Bank Indonesia or the Government and some fatwa are authorized by the state.³⁰

C. The Shift of Fatwa Binding

Fatwa is an answer to a question or an *ijtihad* or a legal provision concerning an incident which is legally unclear.³¹ In addition, it is used to give explanation (*al-ibânah*).³² Terminologically, fatwa means creating a legal solution to an issue addressed by fatwa seeker (*mustafti*) either individually or collectively or known or unknown.³³ Basically, it is delivered by those who possess sufficient competence.³⁴ According to Abu Zahra, it is more specific than *ijtihad* because *ijtihad* arise whether questions appear or not while fatwa will not appear unless an issue or question arises.³⁵

The fatwa issued for private, institutional or collective does not bind for the fatwa seeker, but for the *mufti*.³⁶ Zamakhsyari argues fatwa as an answer to an incident does not legally binds,³⁷ so that it is dynamic and the different fatwa may occur in one place to another or even in the same place. To this end, an opinion generated by *ijtihad* is attributed to the Muslims generally or to those who seek answer or those who do *ijtihad* themselves.

³⁰ Chapter II Article 3 PBI No. 9/19/PBI/2007 on the Implementation of Sharia through Fund-Raising and distribution and Islamic Banking Services. Those are the examples of authorized fatwa.

³¹ Hasbi As Shiddieqy, *Peradilan dan hukum Acara Islam*, 1st edition, (Semarang: Pustaka Rizki, 1997), p. 86.

³² 'Âmir Sa'îd al-Zaybary, *Mabâhith fi Ahkâm al-Fatwâ*, (Beirût: Dâr Ibn Hâzim, 1995), p. 31.

³³ Yûsuf al-Qaradhâwy, *al-Fatwâ bayn al-indibât wa al-tasayyub*, terj. As'ad Yasin, (Jakarta: Gema Insani Press, 1997), p. 5.

³⁴ According to al-Ghazali, a fatwa seeker is not allowed to take some fatwa except from those who are knowledgeable and fair. It means they cannot ask for a fatwa from the fool. See Abu Hâmid Muḥammad ibn Muḥammad al-Ghazâlî, *al-Mustasfâ fi 'ilm al-Uṣûl*, (Libanon: Dâr al-Kutub al-'Ilmiyyah, 1996), p. 373.

³⁵ Muḥammad Abu Zahrah, *Uṣûl al-Fiqh* (Libanon: Dâr al-Fikr al-'Araby, nd.), p. 401.

³⁶ Muḥammad Abu Zahrah, *Uṣûl al-Fiqh*, p. 405.

³⁷ Ma'ruf Amin, *Fatwa dalam Sistem Hukum Islam* (Jakarta: eLSAS, 2008), p. 20.

Muslims are not subjected to implement the result of an *ijtihad* which is doubtful (*Zanni*) and may be an object of *ijtihad* by others. In the meantime, for those who conduct the *ijtihad*, the result binds them because it is sharia that they believe and must follow. Similarly, for those who seek an answer, they are bound by the result considering they have landed their choice.³⁸

The fatwa binding has now shifted. If, theoretically, it does not bind, but in *de jure* and *de facto* it surely does. Practically, some fatwa issued by DSN and MPS bind Islamic financial institutions although the binding process is authorized by Bank Indonesia or the Government. Fatwa becomes the basic regulation for Bank Indonesia, the Ministry of Finance, Capital Market, and other regulatory agencies. The fatwa by DSN, for instance, becomes a regulation for Bank Indonesia such as regulation No. 9/19/ PBI/2007 Bank Indonesia on the Implementation of Sharia in terms of Fundraising and distribution and Islamic Banking Services. Under this regulation, the fundraising applies *wadī'ah*, *muḍārabah* and alike while the distribution uses *muḍārabah*, *mushārah*, *murābahah*, *salam*, *istiṣnā'*, *ijārah*, *qard* and other systems. In turn, the banking services are based on *kafālah*, *hawālah* and *ṣarf* system.³⁹ Another instance is regulation No. 6/24/PBI/2004 Bank Indonesia Concerning Commercial Banks which implements their business based on Sharia Principles. This regulation explicitly mentions the existence of DPS as an Islamic banking supervisory is a must in each Islamic bank. Additionally, PBI No. 7/46/PBI/2005 in terms of the Agreement of fundraising and distribution by Banks that base their business on Sharia Principles. The existence of this fatwa, either from its process of drafting or its content cannot be separated from the role of DSN and the influence of the fatwa issued. Consequently, new Islamic banking products may be authorized by Bank Indonesia after validated by the fatwa of DSN.⁴⁰

The DSN's fatwa also becomes a source of regulation for the Ministry of Finance (Kementrian Keuangan/KMK) such as decree by the Minister of Finance No. 422/KMK.06/2003 on September 30, 2003 concerning the Implementation of Insurance and Reinsurance Company; decree by the Minister of Finance No. 424/ KMK.06/2003 on September 30, 2003 on the Financial Health of Insurance and Reinsurance Company; and decree by the Minister of Finance No. 426/KMK.06/2003 on September 30, 2003 in terms of Insurance

³⁸ Ahmad Hanafi, *Pengantar dan Sejarah Hukum Islam* (Jakarta: Bulan Bintang, 1995), p. 170-171.

³⁹ Chapter II Article 3 PBI No. 9/19/PBI/2007 on the implementation of Sharia through Fund-Raising and distribution and Islamic Banking Services. Those are the examples of authorized fatwa.

⁴⁰ Regulation Number 6/24 / PBI / 2004 Bank Indonesia on commercial banks running their business based on Sharia principles

and Reinsurance Company Licensing. This regulation provides the procedures for establishing or converting Islamic insurance, the application of Islamic principles and the presence of DPS in the Islamic insurance as supervisor on the implementation of Islamic insurance in insurance company.⁴¹

Hasanuddin even records some state agency regulations derived from the DSN's fatwa as follow: (1) Circular Letter by Bank Indonesia No. 10/14/Dpbs on March 17, 2008 on the Implementation of Islamic principles on fundraising and distribution and services of Islamic banking. In the circular, the contract mechanism of Islamic banking activities is arranged. This arrangement is greatly affected by the provisions of fatwa by DSN. (2) Bank Indonesia Regulation (Peraturan Bank Indonesia/PBI) No. 10/11/PBI/ 2008 on March 31, 2008 on the Bank Indonesia Certificates Sharia (SBIS). On article 9, the regulation for *qard* and *Rahn* system is mentioned in SBIS transaction. This article also indicates the separation for both systems. (3) Bank Indonesia Regulation No. 9/19/PBI/2007 on the Implementation of Sharia through Fundraising and distribution and Islamic Banking Services. This provision settles contract and sharia principles in Islamic banking practices and it is greatly influenced by the DSN's fatwa. (4) Bank Indonesia Circular Letter No. 9/8/bpm on March 30, 2007 on Interbank Mudharabah Investment Certificates. In this provision, *mudharabah* mechanism is outlined as described in the DSN's fatwa. (5) Bank Indonesia Circular Letter No. 6/31/DPbS on Sharia Rural Bank. In the letter, the sharia supervisory board is settled. (6) Bank Indonesia Circular Letter No. 8/19/DPbS on August 24, 2006 concerning Sharia Supervision Guidelines and Procedures for Reporting Results of Monitoring the Sharia Supervisory Board (Dewan Pengawas Syariah/DPS). In this provision, the regulation for duty, authority and DPS reporting mechanism is inspired by the DSN's fatwa No. 02 year 2000 on Guidelines for National Sharia Household Board (DSN MUI).⁴² (7) Bank Indonesia Regulation Number 8/3/PBI/2006 on January 30, 2006 on the conversion of conventional bank into commercial bank conducting practices based on sharia principles and the opening of bank offices conducting practices based on sharia principles by the conventional bank. In this regulation, the presence of DPS is settled. (8) Bank Indonesia Regulation Number 7/46/PBI/2005 on the Agreement of fundraising and distribution for Banks which conduct practices based on Sharia Principles. In this regulation, the contract used in Islamic banking practices is set and is originally affected by the DSN's fatwa. (9) Bank Indonesia Regulation No. 6/24/PBI/2004 concerning

⁴¹ Hasanudin. "Konsep dan Standar Multi Akad dalam Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia." *Disertasi UIN Syarif Hidayatullah Jakarta*, 2008, p. 119-120.

⁴² Compare the provisions of the circular letter (Surat Edaran/SE) in the appendix section II of DPS with SK DSN article 4 on the functions and tasks of the DPS. Both provisions have similarities which indicate that SE is inspired by the DSN's fatwa because the birth of DSN fatwa came earlier than the SE of Bank Indonesia.

Commercial Banks implementing Sharia principles. In this regulation, it is not only the existence of DPS is recognized but also the existence of DSN. (10) Bank Indonesia Regulation No. 4/1/PBI/2004 concerning the Conversion of Conventional Commercial Banks practices into Commercial Banks practices based on Sharia Principles and the Opening of Bank offices based on Sharia Principles by Conventional Commercial Banks. This regulation acknowledges the existence of DSN and DPS. (11) Regulation by the Chairman of the Capital Market Supervisory Agency and Financial Institution No. Per-04/BI/2007 on contracts applied in Financing Company based on Islamic principles, December 10, 2007. This regulation regulates contracts applied in the capital market practices based on Islamic principles. Like other regulations, this regulation is influenced by the DSN's fatwa on contract agreement. (12) Regulation by the Chairman of the Capital Market Supervisory Agency and Financial Institution No. Per-03/BI/2007 on Sharia-based Financing Company practices. In this regulation, the existence of DSN and DPS is acknowledged and contracts applied in Islamic finance practices are also settled.⁴³

D. Economic Ethics in Islamic Banking Fatwa

Islamic banking Fatwas are divided into three groups, fundraising fatwa, fund distribution fatwa and services fatwa. The fatwa on fundraising which is legitimized by DSN includes checking, savings and deposits. In the meantime, the products of fundraising approved by MPS are savings and deposits. Although the number of the fundraising products by the fatwa of MPS is less than that of DSN, but the setting of the fatwa is more happening in the fatwa of MPS which endorses the fatwa of *wadi'ah* savings, *Mudharabah* savings, deposits and *Tawarruq* savings.

In the legal consideration, the DSN mentions three fatwa on clearing, deposits, and savings which are entirely in accordance with Islamic law (Sharia).⁴⁴ The consideration on the suitability of Sharia is also determined by the MPS's fatwa.⁴⁵ The legal basis of the DSN's fatwa for the three products; clearing, deposits and savings is alike. The basis includes the principle of voluntary, a must-perform trust, obligation for fulfilling contracts and all *muamalah* practices are originally permissible. In addition, the DSN's fatwa

⁴³ Hasanudin, "Konsep dan Standar Multi Akad", p. 146-148.

⁴⁴ Ichwan Syam, dkk., *Himpunan Fatwa Dewan Syariah Nasional*, Vol.1 (Jakarta: DSN dan BI, 2006), p. 1, 8, 15.

⁴⁵ Bank Negara Malaysia, *Sharia Resolutions in Islamic Finance* (Kuala Lumpur: Bank Negara Malaysia, 2010), p. 101-102, 120, 156.

outlines the blessing of *mudhârabah*, the principle of independent contract and cooperation.⁴⁶

The legal consideration of MPS includes kindness in paying debts, the ban on taking benefits from *qard* (gratuitous loan), the prohibition of mixing *Salaf-bay'* and of two terms in one transaction, the obligation for applying conditions, the prohibition of *riba* and freedom to trade.⁴⁷ Similarly, the MPS also applies *jahâlah* prohibition in the profit and loss of *mudharabah*, the transparency of contract, injustice and guarantees for welfare.⁴⁸

Some ethics and provisions set forth in the fatwa by the DSN and MPS are generally related to matters regulated in Sharia. The three fatwas by DSN on clearing, deposits and savings arrange two main points; the prohibition of applying interest and the reducing of customers benefit ratio without their consent. In the fatwa for clearing, another provision is set aside; the provision of giving (*'Ataya*) on *wadi'ah* (safekeeping of a deposit) contract by Islamic Financial Institutions (Lembaga Keuangan Syariah/LKS) which is voluntary and optional.⁴⁹

Like the fatwa by DSN, the fatwa by MPS sets the provision of giving (*'Ataya*) on *wadi'ah* as an optional agreement because giving should not become a habit (*'urf*). If it becomes a habit, its status turns into a binding requirement.⁵⁰ There are other ethics involved such as the principle of trust, fund management transparency, fairness, the responsibility of each party under contract and the ban on the combination of *qard-mu'âwâdât*.⁵¹

One of Islamic banking fund distribution products which is authorized by the DSN includes *murabahah*, *salam*, *istishna*, *mudharaba*, *musharakah*, *ijarah*, *qardh*, *parallel istishna* and *Ijarah muntahiyah bitamlik*. Other products are *Hajj* financing, Sharia newspaper account financing, transfer of debt,

⁴⁶ See Al-Quran, Surah al-Nisa [4]:29 on the principle of voluntary, al-Baqarah [2]:283 on the obligation for implementing trust, al-Maidah [5]:1 regarding the obligation for fulfilling contract, hadith by Ibn Majah on the blessing of *mudharabah*, hadith by al-Tirmidhi about freedom of contract, responsibilities for all parties and jurisprudence for freedom to trade. Ichwan Syam, et al., *Himpunan Fatwa*, Vol.1, p. 2-5, 9-12, 16-18.

⁴⁷ See hadith by al-Bukhari about kindness in paying debt, by Ibn Hajar al-Asqalani from Ali bin Abi Talib about the prohibition on taking benefits of *qard* (gratuitous loan), by al-Nasai about the ban on *bay'* and *salaf* transactions, two terms in buying-selling transaction and profit without risks, and Surah al-Baqarah [2]:275 concerning the prohibition of *riba*. Bank Negara Malaysia, *Shariah Resolutions*, p. 52, 95, 105, 121.

⁴⁸ Bank Negara Malaysia, *Shariah Resolutions*, p. 33, 35, 39.

⁴⁹ Ichwan Syam, et al., *Himpunan Fatwa*, Vol.1, p. 5, 7, 12, 14, 19, 20.

⁵⁰ Bank Negara Malaysia, *Shariah Resolutions*, p. 120.

⁵¹ Bank Negara Malaysia, *Shariah Resolutions*, p. 27, 29-30, 32, 36, 37, 52, 104-105.

wadi'ah certificates of Bank Indonesia, multi financing services, line facility financing, Sharia newspaper account financing with *musharakah* system, Bank Indonesia Certificates Sharia (Sertifikat Bank Indonesia Syariah/SBIS), SBIS with *ju'alah* system, gold buying and selling with credit basis and *musharakah mutanaqisah*. In addition to these products, the DSN's fatwa also certifies the existence of fine, *ta'wid* and repayment cut.⁵²

The MPS's fatwa also endorses some fund distribution products of Islamic banking. Those products include *Ijarah* financing (resolution 1-4, 6-10, 12-13), parallel *istishna* (resolution 15), *mudharaba* and *musharakah* (resolution 29), *musharakah mutanaqishah* (resolutions 30, 31), *qardh* (resolutions 32, 33), *Tawarruq* financing (resolution 61), repayment cut (resolution 78-80), compensation and fine (resolution 81-83) and hybrid product known as *istisnaa mawazi-Ijara Ijara mawshufah-fi zimmah muntahiyah bitamlik* (resolution 97).

The DSN's consideration fatwa generally sets the discrepancies of economic practices in accordance with Islamic principles,⁵³ solidarity and justice,⁵⁴ win-win solution, *halal* revenue for social activities, social welfare as the basis and goal of law enforcement, protection of rights, legal certainty, reward and easements.⁵⁵ In addition, the legal consideration in the MPS's fatwa also stands on some important aspects such as Sharia ruling, togetherness, fairness and loss prevention, good virtues on *qard* and *fine* application, win-win solution, *gharar* ban and willingness.

⁵² These products are mentioned in the DSN's fatwa. Here is the detail; *murabaha* financing (fatwa 4), *salam* (fatwa 5), *istisna'* (fatwa 6), *mudharabah* (fatwa 7), *musharakah* (fatwa 8), *ijarah* (fatwa 9), *qard* (fatwa 19), *pararel istisna'* (fatwa 22), and *al-ijarah al-muntahiyah bi al-tamlik* (fatwa 27). In addition, the DSN also clarifies Hajj financing (fatwa 29), Sharia newspaper account financing (fatwa 30), transfer of debt (fatwa 31), *wadi'ah* certificates of Bank Indonesia (fatwa 36), multi financing services (fatwa 44), line facility financing (fatwa 45), Sharia newspaper account financing with *musharakah* system (fatwa 55), Bank Indonesia Certificates Sharia (Sertifikat Bank Indonesia Syariah/SBIS) (fatwa 63), SBIS with *ju'alah* system (64), gold buying and selling with credit basis and *musharakah mutanaqisah* (fatwa 77). At last, it also issues fine (fatwa 17), *ta'wid* (fatwa 43) and repayment cut (fatwa 23 and 46).

⁵³ Ichwan Syam, et. Al, *Himpunan Fatwa*, Vol.1, p. 20, 232. Ichwan Syam, et. al, *Himpunan Fatwa Dewan Syariah Nasional*, Vol.2, (Jakarta: DSN dan BI, 2010), p. 99, 106.

⁵⁴ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 48. Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.2, p. 209.

⁵⁵ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 79, 96, 105, 140, 160, 312, 342.

The legal ethics derived from sources of Islamic law; the Quran, the Hadith and the jurisprudence as the basis of the DSN's and MPS's fatwa generally embodies the basic principles of command and ban in Sharia. In this regard, the legal basis of fund distribution in Islamic banking as the result of the DSN's fatwa involves the principle of willingness, the prohibition of *riba*, the obligation for fulfilling contract, easements, cooperation, contract freedom and prohibition for harming others. In the same way, the other legal basis honors the importance of recording to support the certainty of law, the ban of any disadvantages, the fulfillment of contract terms, the consideration on social welfare and loss prevention, the recognition of culture and social existence (*'urf*) and honesty.⁵⁶ Some economic ethics set out in the MPS's fatwa include justice, honesty, the principle of expediency, the principle of willingness and the obligations for running contract.⁵⁷

Other legal ethics in the DSN's fatwa are built upon cooperation, the quality of workers, timely paycheck and right, the ban on hybrid contracts which rise practices forbidden by Sharia and the easement of debt payment.⁵⁸ The MPS confirms the ban on taking *qard* benefits, the obligation of paying debt immediately, easement service, the prohibition of hybrid contracts resulting in *riba* and legal certainty.⁵⁹

On the content of the fatwa, both DSN and MPS establish the legitimacy of a proposed product. To this end, their decision constructs some ethical provisions in which the Islamic financial institutions (LKS) must follow. In the fatwa of *murabaha*, for instance, the DSN sets up a few things such as the

⁵⁶ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 21-24, 29-32, 36, 79-81, 49-50, 136-138. Note that the hadith by al-Jama'ah from Abu Hurairah states the ban on procrastinating repayment of debt. In turn, the hadith by al-Bayhaqi from Said al-Khudri declares the principle of willingness. Additionally, Surah al-Baqarah [2]:280 states the easement provided for creditors and the hadith by al-Bukhari from Ibn Abbas says honesty in dealing with contract. In the meantime, the hadith by Ibn Majah affirms the prohibition of endangering ourselves or others' and the hadith narrated by Abu Dawud from Abu Hurairah states the ban on betraying partners.

⁵⁷ Bank Negara Malaysia, *Sharia Resolutions*, p. 7. Prophet Muhammad said: "the profit is based on what is agreed and the loss is paid upon what is deposited".

⁵⁸ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 56-58, 161-163, 106-108. See Al-Quran, Surah al-Zukhruf [43]:32 on cooperation basis, Surah al-Qasas [28]: 26 on recruiting honest and qualified workers, the hadith by Ibn Umar from Ibn Majah on the ethics of paying wages timely (before the sweat of the workers dried out), the Jurisprudence on danger prevention and welfare enforcement, Surah al-Baqarah [2]: 282 on the importance of debt recording, the hadith narrated by Muslim on the easement provided for people and the hadith by Ahmad from Ibn Mas'ud on the ban on two forms of contract in a single object.

⁵⁹ Bank Negara Malaysia, *Sharia Resolutions*, p. 51, 121-122, 124-125.

prohibition of *riba*, *halal* contract, price closure, compensation closure, customers' right on selling goods, honesty and payment delay due to bankruptcy.⁶⁰ The fatwa by the Sharia Supervisory Board of Kuwait Finance House (Dewan Pengawas Syariah Kuwait Finance House/KFH DPS) confirms the profit resulted in *murabaha* is not determined by the religion. In this case, low profit is a part of the ethics of Islam in running good, polite and tolerant trade.⁶¹ The DPS KFH recommends KFH to not provide *murabaha* financing on musical instruments and cassettes consisting of songs. Although the scholars are having a dispute regarding the legal use of music, the DPS KFH avoids it as a form of prudence (*ihtiyât*) and precaution for any forbidden practices (*sadd al-dhari'ah*).⁶² Another ethical decision affirmed in the DSN's fatwa clarifies the ban on selling goods before acceptance, the ban on harming others and Sharia-based object financing.⁶³ The Majmah Islamic Jurisprudence (Majmah Fikih Islam/MFI) confirms that each party may create conditions as long as there is no harm intended.⁶⁴ The fatwa by KFH DPS also bans on reselling the object of *istishna* before completion considering the absence of the traded object during contract.⁶⁵

The fatwa by the DSN also regulates the rights and responsibilities of the contracting parties in accordance with the applied contract, cooperation and justice in profit and loss, the prohibition of *jahâlah*, wage flexibility, willingness, responsibility of each party, the ban on mixing wage with *qard* loan and the justification of voluntary donations with *qard* basis.⁶⁶ According to the fatwa by the MPS, the *qard* is not a habit (*'urf*) and is not mentioned in the contract.⁶⁷ However, in another side, the fatwa establishes the principle of justice.⁶⁸

⁶⁰ Ichwan Syam, et. Al, *Himpunan Fatwa*, Vol.1, p. 24-27.

⁶¹ Fatwa No. 502. Downloaded from <http://moamlat.al-islam.com/Page.aspx?pageid=529&TOCID=70>

⁶² Fatwa DPS KFH No. 326 and 456. Downloaded from <http://moamlat.al-islam.com/Page.aspx?pageid=529&TOCID=4&BookID=506&PID=16>

⁶³ Ichwan Syam, et. Al, *Himpunan Fatwa*, Vol.1, p. 32-34. Bank Negara Malaysia, *Shariah Resolutions*, p. 22-23.

⁶⁴ The legal decision by the MFI on the first to the eight meeting. Downloaded from <http://moamlat.al-islam.com/Page.aspx?pageid=529&TOCID=163&BookID=506&PID=144>.

⁶⁵ The fatwa by DPS KFH No. 336. Downloaded from <http://moamlat.al-islam.com/Page.aspx?pageid=529&TOCID=163&BookID=506&PID=146>.

⁶⁶ Ichwan Syam, et. Al, *Himpunan Fatwa*, Vol.1, p. 43-46, 53, 59-60, 176, 108-109. Bank Negara Malaysia, *Shariah Resolutions*, p. 119.

⁶⁷ Bank Negara Malaysia, *Shariah Resolutions*, p. 122.

⁶⁸ Bank Negara Malaysia, *Shariah Resolutions*, p. 46.

The fatwa by the DSN also regulates that sanctions or penalties are only applied to capable clients that delay payments and are not justified to apply to the *force majeure*. In this regulation, the penalties aim at *ta'zir* (detering) and the fine should be arranged and agreed during contract. The penalties are then accounted as social fund.⁶⁹ Additionally, the fatwa by the MPS agrees that the revenues from the penalties and fines are accounted as social fund.⁷⁰ In the case of fines, The DSN and MPS settle the application of *ta'wid* are only addressed to those who do not comply obligations and are subjected to the real losses, not to the losses that may occur. In addition, they are only charged on debt case, not on *mudharabah* and *musharakah*.⁷¹ However, the DSN and MPS address different opinion regarding the record of repayment cut. According to the fatwa by the DSN, the cut is not stated during contract to prevent *riba* practice. In the meantime, the MPS requests authority to set the record of the cut to enforce the legal certainty and avoid disputes.⁷²

The products of Islamic banking services authorized by the DSN fatwa are based on *wakalah*, *hawalah* and *kafalah* contract system. The other products include Sharia charge card service, Sharia cards, safe deposit box, gold mortgage with *rahn* basis, Syariah-based import L/C, Syariah-based export L/C and L/C with *kafalah bil ujarah* contract. In another side, the fatwa by the MPS endorses the products and services of Islamic banking in the form of *wakalah*, *kafalah* and credit card services.

The legal considerations on the products of Islamic banking services mainly occur because there the existing practices are not in accordance with the principles of Sharia (*kafalah* services and Sharia charge card) and apply interest system (sharia card).⁷³ The legal ethics outlined in the legal basis of the DSN's fatwa emphasize the obligation for fulfilling trust, mutual help in goodness, friendliness in paying debts, freedom of contract, helping others in paying debts and the principle of welfare enforcement and danger prevention.⁷⁴ In the charge card service, the DSN's fatwa sets some ethics by banning extravagance, greediness and wastefulness, fulfilling trust, prohibiting *riba*, making debt record as legal certainty, fulfilling the right of customers and recognizing good

⁶⁹ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 99.

⁷⁰ Bank Negara Malaysia, *Sharia Resolutions*, p. 129-130.

⁷¹ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 321-322. Bank Negara Malaysia, *Sharia Resolutions*, p. 130-134.

⁷² Bank Negara Malaysia, *Sharia Resolutions*, p. 124-125, 150. Fatwa No. 316. Downloaded from <http://moamlat.al-islam.com/Page.aspx?pageid=529&TOCID=4&BookID=506&PID=41>.

⁷³ Bank Negara Malaysia, *Sharia Resolutions*, p. 148, 151-153.

⁷⁴ Ichwan Syam, dkk., *Himpunan Fatwa*, Vol. 1, p. 64-66, 70-72, 76-77.

tradition.⁷⁵ Furthermore, the MPS's fatwa outlines some ethics in seeking honest and qualified workers and giving wages timely (before the sweat dried out).⁷⁶

The legal basis of ethics and legal norms in the fatwa by the DSN upholds the principle of willingness, contract fulfillment, the prohibition of *riba*, the blessing in *mudharabah* cooperation system, the principle of welfare enforcement and danger prevention and freedom of contract.⁷⁷

In the legal decision, the fatwa by the DSN and MPS sets several economics ethics. In *wakalah*, for instance, the fatwa by the DSN establishes the suitability of Sharia practices on objects involved. The same provision is set on *kafalah* contract which confirms the existence of *halal* object. In addition, the DSN also specifies the willing attitude in *Kafalah* contract.⁷⁸ The other ethics settle fine as a social fund (due to late payment/exceed/over-limit), *riba*-free, the absence of unlawful or immoral transaction, *israf*-free (wastefulness-free) and the prevention of endless debt (*ghalabah al-dayn*).⁷⁹ In the same way, the fatwa by the MPS also specifies some provision that *ujrah* is based on real services and is not associated with *qard*, that debt moratorium and cash with cash exchange on different values are prohibited and that the setting of wages on *wakalah* by the percentage of loans is banned because this practice resembles *riba*.⁸⁰

The other ethics in the fatwa decision by the DSN outlines that the object of contract is lawful (*halal*), the agreement of rights and responsibilities is held⁸¹ and wages are based on real costs and are in the form of nominal, not percentage.⁸² The fatwa by the DPS KFH affirms the ban on diverting customers' bill in conventional banks by the KFH based on interest defined by the banks.⁸³

⁷⁵ Ichwan Syam, et. Al, *Himpunan Fatwa*, Vol.1, p. 297-304. Ichwan Syam, et. Al, *Himpunan Fatwa*, Vol.2, p. 2-11. See Al-Quran Surah al-Furqan [25]:67 on the prohibition of extravagance or stinginess and Surah al-Isra [17]: 26-27 on the prohibition of wastefulness.

⁷⁶ Bank Negara Malaysia, *Sharia Resolutions*, p. 150.

⁷⁷ Ichwan Syam, et. Al, *Himpunan Fatwa*, Vol.1, p. 38-41, 208-213, 221-227.

⁷⁸ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 63, 73.

⁷⁹ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 308-310. Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 19-21.

⁸⁰ Bank Negara Malaysia, *Sharia Resolutions*, p. 150, 151, 153.

⁸¹ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 148.

⁸² Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 159, 218-219, 229-230. Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 44, 52, 76, 87.

⁸³ Fatwa No. 498. Downloaded from <http://moamlat.al-islam.com/Page.aspx?pageid=529&TOCID=163&BookID=506&PID=138>.

E. Economics Ethics in the Fatwa for Non-Bank

The number of the DSN's Fatwa on Islamic insurance, Islamic capital markets and sharia pawnshops is twenty fatwa, whereas that of the MPS's fatwa reaches thirty-one fatwa. In the meantime, the number of fatwa related to SBSN, Sharia-based Direct Sales (Penjualan Langsung Berjenjang Syariah/PLBS/MLM) and Sharia-based guarantee in the DSN is eight fatwa while the MPS generates nine fatwa. In addition, the fatwa by the DSN tends to dominate Islamic capital market regulation, whereas the MPS's fatwa dominates Islamic capital markets and insurance.

The legal consideration of the fatwa by the DSN on Islamic mutual funds include the ban on hoarding goods, leaving assets unproductive, the improvement of community's economics, Sharia-based ethics and economics, consensual (*al-tarâḍi*- التراضي), justice (*al-'adâlah* العدالة) and the ban on harming each other (*lâ ḍarara Wala ḍirâr*- لا ضرر ولا ضرار).⁸⁴ Additionally, the other legal considerations in the fatwa are generally related to the mismatch of financial practices with the principles of Sharia and the community's needs of Sharia.⁸⁵ Similarly, the Fatwa by the MPS also considers the different concept between Islamic and conventional banks, the prevention of *subhat* (unknown) practices, lawful (*halal*) object, the protection for customers' rights and the application of good management.⁸⁶

The other legal considerations in the fatwa by the MPS affirms the principle of voluntary, the prohibition of injustice, cooperation in the profit and loss, the protection for customers, the prohibition of gambling and betting, the tangible object of contract, the ban on *gharar*, the existence (*thâbit*) and the remaining (*mustaqir*) of debt and protection for contract.⁸⁷ In turn, the fatwa by Kuwait bans the conditional *sale and lease back* contract.⁸⁸ The DSN's fatwa also considers the prohibition of *riba*, the ban on implementing *gharar* (risky or hazardous sale), hand-to-hand-based contract and the compatibility with the Sharia principles.⁸⁹

The legal basis applied in the DSN's fatwa involves the principle of willingness, the prohibition of *riba*, the obligation for fulfilling contract,

⁸⁴ Ichwan Syam, et. el, *Himpunan Fatwa*, Vol.1, p. 111-112.

⁸⁵ Ichwan Syam, et. al *Himpunan Fatwa*, Vol.1, p. 123, 165, 193, 253.

⁸⁶ Bank Negara Malaysia, *Shariah Resolutions*, p. 24, 27, 117, 70, 75-77, 137, 139, 143, 147.

⁸⁷ Bank Negara Malaysia, *Shariah Resolutions*, p. 74, 78, 87, 89, 91, 112, 106, 107.

⁸⁸ In the fatwa No. 98 and 131, the DPS KFH bans the conditional sale and lease back contract. Downloaded from <http://moamlat.al-islam.com/Page.aspx?pageid=529&TOCID=4&BookID=506&PID=3>

⁸⁹ Ichwan Syam, et. Al, *Himpunan Fatwa*, Vol.2, p. 148.

freedom of contract and the ban on harming each other.⁹⁰ The other ethical considerations include the obligation for fulfilling trust, the prohibition of gambling, the easement for customers, mutual help in goodness, fraternity, rights and responsibilities, the importance of having intention, the ban on implementing *gharar* practices and the principle of welfare.⁹¹ In the same way, the fatwa by the MPS issues the following legal ethics; consistency in piety, cooperation in goodness, the prohibition of *riba*, *subhat* (unknown practices) prevention and the principle of welfare.⁹² In another fatwa, the DSN affirms the ban on gambling, the leader's (*imam's*) policy for social welfare, the importance of preparing for the future, the prohibition of betraying partners, the recording of debt, guarantees, *riba*-based goods buying and selling traded in same value and in cash, the ban on *gharar*-based sale and purchase, the ban on hurting one another and the principle of welfare enforcement and danger prevention.⁹³

The MPS's Fatwa refers its legal basis on willingness, cooperation in goodness, fulfilling the concept of Sharia, risk and profit, the principle of willingness, the prohibition of interest, the principle of welfare enforcement and danger prevention, honesty, the blessing of cooperation and *sadd al-dharî'ah*.⁹⁴ The other ethics in the DSN's fatwa are the ban on selling unpossessed goods, the prohibition on *salaf* and *bay'*, two terms in a single transaction, the prohibition of buying-selling with *gharar* practice, the prohibition of buying-selling unclean objects on selling goods before acceptance/*qabd*, the ban on *ihtikâr* and the blessing of cooperation.⁹⁵

The legal ethics on the fatwa for Sharia Securities (Surat Berharga Syariah Negara/SBSN), multi-level marketing (MLM) and other Islamic insurance policy is considered as the leader's policy addressed to uphold the

⁹⁰ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 112-114.

⁹¹ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 124-130. See Al-Quran Surah al-Maidah[5]:90 on the prohibition of *khamr* (alcohol), gambling, presenting goods sacrificed to idols and gambling fate. Also see Surah al-Baqarah [2]:278-279 on the prohibition of *riba*, the hadith by Muslim from Nu'man on the brotherhood/sisterhood of Muslims and the hadith narrated by Bukhari and Muslim on the importance of intention (willingness).

⁹² Bank Negara Malaysia, *Sharia Resolutions*, p. 69, 71, 73.

⁹³ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 153, 238-242, 254-259, 380-384, 369-372, 393-403, 408-415. Wahbah al-Zuhaili, *al-Mu'âmalât al-Mâliyyah al-Mu'âsirah*, p. 89. See the hadith by al-Bukhary and Muslim from Abu Hurairah on *Hajj Mabruj* (the blessed *hajj*), the jurisprudence on the leader's policy for social welfare and the hadith by Muslim from ibn Ubadah ibn Saamit on *riba*-based goods buying and selling traded in same value and in cash.

⁹⁴ Bank Negara Malaysia, *Sharia Resolutions*, p. 26, 60-61, 63, 67, 74, 79, 86-87, 90, 93.

⁹⁵ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 265-269, 246-250.

social welfare and responsibilities for both parties under contract.⁹⁶ The legal norms in the DSN's fatwa on Multi-Level Marketing (MLM) includes the prohibition of *bay' Hasat* (sale by betting) and *bay' gharar* (deceptive sale), the ban on deception, the ban on selling dogs, pigs or corpse, prostitution and paranormal, the prohibition of *khamr* and the curse for corruption personnel (the giver and the receiver).⁹⁷

The ethics and legal norms in the fatwa consideration above are also mentioned in the verdict of fatwa by the DSN and MPS. The ethics arranged in the DSN's fatwa is about profit-sharing system, investment on Islamic instruments, Sharia-based issuers, the prohibition of gambling, *riba* and *haram* food and beverage, the ban on *gharar* investment, *bay' al-ma'dum* (short selling), insider trading, separating *halal* and *non-halal* elements, *non-halal* revenue for social welfare.⁹⁸ Other ethics illustrates the ban on speculation, manipulation, corruption, immorality and brutality and *ihtikâr* (hoarding).⁹⁹ The MPS's Fatwa confirms that *sukuk* (financial certificates) should be supported with obvious asset or combination of assets and financial assets and that placing conventional and Islamic cooperation in one package is forbidden.¹⁰⁰

The object of the SBSN contract in the fatwa by the DSN is subjected to fulfill the principles of Sharia and use its funds for religious activities, conduct fair auction (conspiracy-free) and prevent *gharar* and *tadlis* as well as separate *ijarah* from *bay'*.¹⁰¹ The fatwa by the MPS settles the *riba-free*-based traded objects in financial markets,¹⁰² the separation between *Ijarah* and *bay'* and the clarity of rights and obligations. In details, the ethics of fatwa in MLM varies, such as real transactions on the sale and purchase of goods or services, the purchased goods or services used for good reason. Similarly, the fatwa clarifies the ban on *gharar*, *maysir*, *riba*, *darar*, *zulm* and immoral practices, the ban on excessive mark-up, passive bonus prevention to neglect *ighrâ'* (being tempted until forgetting to fulfill obligations), the elimination of exploitation or injustice between both parties, the ban on activities contradicting faith such as *shirk*, cult and immoral practices and restraining money game.¹⁰³

F. The Comparison of Ethics in Fatwa

⁹⁶ Ichwan Syam, dkk., *Himpunan Fatwa*, Vol.2, p. 167-171, 189-195.

⁹⁷ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol. 1, p. 239-244.

⁹⁸ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 116-122.

⁹⁹ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 274-277, 197-198, 205-206, 293-294. Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 61-63.

¹⁰⁰ Bank Negara Malaysia, *Sharia Resolutions*, p. 24, 28, 70, 72, 75, 97.

¹⁰¹ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 174-175, 186-187, 195.

¹⁰² Bank Negara Malaysia, *Shariah Resolutions*, p. 111.

¹⁰³ Ichwan Syam, et. al, *Himpunan Fatwa*, Vol.1, p. 247-249.

From the above description, the writer classifies ethics and legal norms in the fatwa by the DSN and MPS into several categories. He classifies the ethics and norms into Sharia or Islamic ethics, the principle of contract and the pillars of contract (contract doer/*âqid*, the object of contract, the purpose of contract, the consent granted and businesses). Respectively, the Islamic ethics includes four criteria of ethics; the prohibition of *riba*, the support for social activities, cooperation and kindness and welfare. Unlike the Islamic ethics, the principle of contract outlines seven categories; freedom, justice, equality, honesty, willingness, legal certainty and *maslahah* (welfare). In the meantime, the ethics of contract doers covers two terms; rights and responsibilities and protection, whereas the object of contract relates its compliance with terms and conditions by Sharia.

The prohibition of *riba*, according to Bal'abbas, is the foundation of Islamic economics system in addition to charity (*zakah*). He argues the obligation of *zakah* reflects broad scope with various types of administration such as optional charity, expiation (*kafarat*), endowments, wills, inheritance, grants and so on. With *riba* come the following restrictions; *ihtikâr* (monopoly), *gharar* (uncertainty), *jahâlah* (vagueness), gambling, *tadlis* (false information) and alike.¹⁰⁴ In turn, by the obligation of *zakat* and other administrations, *hibah* (grants) is most commonly found in the DSN's fatwa especially on the Islamic insurance products and the use of non-*halal* funds for social purposes. To this end, the prohibition of *riba* and its derivatives particularly *riba* with *qard* basis and *riba* resulted in temporal selling-buying activities is mostly found in the fatwa by the DSN and MPS.¹⁰⁵ The greatest number of regulations for *riba* happens because the gap between Islamic concept and financial practices has

¹⁰⁴ 'Abd al-Razzaq Sa'id Bal'abbas, "Hal Qaşar al-Fuqahâ' al-Mu'âşirun fi Bayan Uşûl al-Nizâm al-Iqtisâd al-Islâmî?", *Islamic Economics Journal, King Abdul Aziz Universitas*, Vol. 21, No. 1, (2008), p. 35-36.

¹⁰⁵ Conceptually, *riba* means an increase (*ziyâdah*), developing (*numuw*) and excessiveness. The majority of scholars classify *riba* into two categories, *riba fadl* and *riba nasi'ah*. The Syafi'iyah classifies *riba* into three forms, *Fadl*, *nasi'ah* and *yad*. Specifically, *Riba al-fadl* is described as an unlawful excess in the exchange of two counter-values where the excess is measurable through weight or measure, whereas *Riba yad* means buying and selling by postponing the submission after the separation of two people who do transaction such as selling grain by poem without having to submit and receive in the place of transaction. In the meantime, *Riba nasi'ah* is buying and selling activities in which the payment is postponed and added the price. The type of *Riba* most commonly found is *riba nasi'ah* (also called *riba jahiliyah*). Muhammad b. Ahmad b. Rushd, *Bidayat al-Mujtahid wa al-Muqtasid Nihayat*, Vol.2 (Beirut: Dar al-Ma'rifah, nd.), P. 129. Rachmat Syafe'i, *Fiqh Muamalah* (Bandung: Pustaka Faithful, 2004), 2nd edition, p. 264. Muhammad Ashraf Dawâbah, *Fawâ'id al-Bunuk, Mubarrarât wa Tasa'ulât* (al-Qahirah: Dar al-Salam, 2008), p. 22.

been taking place. The existence of loan with interest basis has happened in the nowadays' financial practices, whereas the Sharia prohibits interest. Consequently, the fatwa by the DSN and MPS makes an effort by doing (*hîlah*) to avoid *riba* practices.¹⁰⁶

The principle of existing contracts in the fatwa by the DSN and MPS is in line with the principle of conventional contract, except the principle of social welfare. Gemala Goddess (et. al) Add the principle of divinity in addition to the six principles except the principle of social welfare.¹⁰⁷ To clarify, Salim infers that the principles of contract include the principle of freedom of contract, the principle of consensus, the principle of *pacta sunt servanda* (legal certainty), the principle of good faith and the principle of personality.¹⁰⁸ In addition, Mariam D. Badruzaman mentions eight principles of contract; trust, legal equality, balance, legal certainty, morality, decency, habits and protection.¹⁰⁹

The ethics of the object of contract in the fatwa by the DSN and MPS generally upholds the theory of *halal*, value and the availability of the object. The scholars agree the object of contract shall exist when the contract is held, the object of contract which includes benefits (*mutaqawim*) and owned (*Mamluk*) is recognized by sharia, the object of the contract can be transferred in hands, the object of contract is characteristically well known and the object is sacred.¹¹⁰ The impact of these provisions encompasses the prohibition of transactions on unknown objects (*gharar* and *jahâlah*), the ban on selling goods before acceptance (*qabd*), the ban on selling and purchasing *haram* (unlawful), unclean and adversely goods and the prohibition of transactions on objects unable to be handed over.¹¹¹ The Prohibitions are found in the fatwa of Islamic and non-Islamic banking.

The Fatwa by the MPS mentions the number of the Sharia ethics is various compared to other ethics while the fatwa by the DSN mentions most of the ethical principles are related to the principle of contract. In the fatwa

¹⁰⁶ Muhammad Maksum, *Fatwa Ekonomi Syariah di Indonesia, Malaysia, dan Timur Tengah* (Jakarta: Balitbang dan Diklat, 2013), p. 143.

¹⁰⁷ Gemala Dewi, et. al, *Hukum Perikatan Islam di Indonesia* (Jakarta: Kencana dan Fakultas Hukum UI, 2005), p. 30-38.

¹⁰⁸ Salim, *Hukum Kontrak Teori dan Teknik Penyusunan Kontrak* (Jakarta: Sinar Grafika, 2003), p. 9-12.

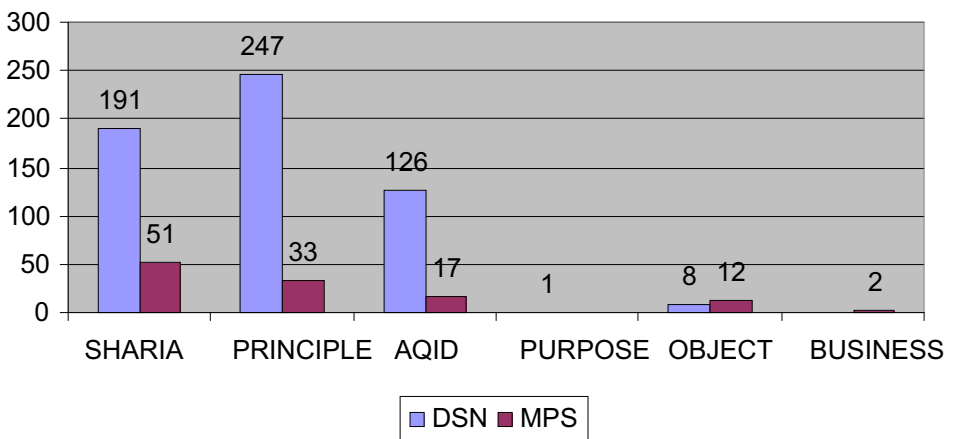
¹⁰⁹ Mariam D. Badruzaman, *KUH Perdata, Buku III, Hukum Perikatan dengan Penjelasannya* (Bandung: Alumni, 1997), p. 22-23.

¹¹⁰ Wahbah al-Zuhayli, *al-Fiqh al-Islâmi wa Adillatuh*, Vol. 4 (Syria: Dar al-Fikr, 2006), 9th edition, p. 3020, 3027. Al-Kasani, *al-Badâ'i' fi Tartib al-Sharâi'*, Vol.5 (Misr: Dar al-Kutub al-'Ilmiyah, 1986), p. 140. Ibn Rushd, *Bidâ'iyat al-Mujtahid*, Vol.2, p. 156. Abu Bakar al-Hisni, *Kifâyat al-Akhyar fi Hilli Ghayat al-Ikhtişâr*, Vol.1 (Sida: al-Maktabah al-'Asriyah, nd.), h. 459.

¹¹¹ Wahbah al-Zuhayli, *al-Fiqh al-Islâmi wa Adillatuh*, Vol.4, p. 3021.

consideration, the Sharia ethics are mentioned 191 times in the DSN's fatwa and 51 times in the MPS's fatwa. In addition, the ethics originally derived from the principle of contract is mentioned 247 times in the DSN's fatwa and 33 times in the MPS's. Furthermore, the ethics dealing the contract doer is mentioned 126 times in the DSN's fatwa and 17 times in the MPS's. Gradually, the ethics related to the object of contract is mentioned eight times in the DSN's fatwa and twelve times in the MPS, whereas the ethics of purpose is stated once in the DSN but is not mentioned in the MPS. Similarly, business ethics is mentioned twice in the MPS's fatwa, but is not found in the DSN's. In the ethics of the object of contract, the MPS mentions more than the DSN. However, in other ethical categories, the DSN's fatwa mention more than the MPS's.

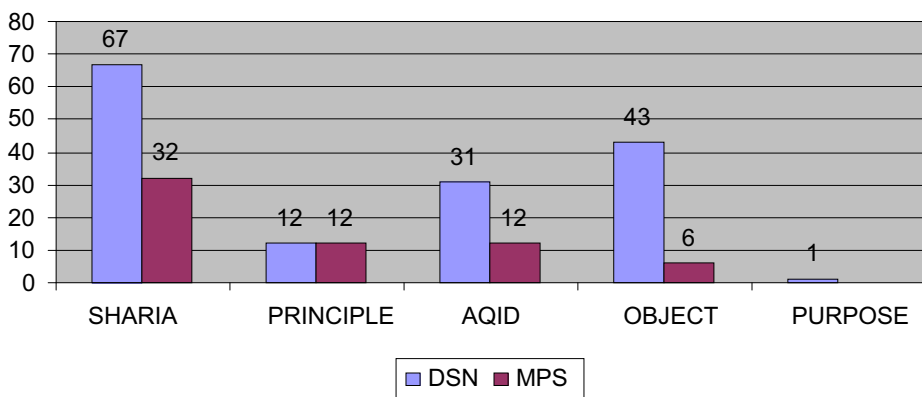
Graph 1
The Comparison of Ethics in the Legal Considerations by the DSN and MPS



The above graph shows that Islamic ethics in the MPS reaches 44%, while in the DSN the fatwa takes 33%. The total of ethics dealing with Islamic principles in the DSN is 44%, whereas the MPS accumulates 29%. Additionally, it presents the number of the ethics dealing with the contract doer in the DSN is around 22% while the MPS takes 15%. In the ethics for the object of contract, the MPS reaches 10%, whereas the number of the DSN is 1.4%. In turn, the ethics related to the purpose of contract is mentioned 0.17% in the DSN and is not mentioned in the MPS. At last, the ethics related to business is mentioned as much as 2% in the fatwa MPS, but it is not found in the DSN fatwa.

In the fatwa consideration, the Islamic ethics are equally and dominantly used in the DSN and MPS. To this end, the Islamic ethics is mentioned 67 times in the DSN and 32 times the MPS. Furthermore, the ethics concerning the object of contract is mentioned 43 times in the DSN and 6 times in the MPS, whereas the ethics related to the principle of contract is equally mentioned twelve times in the DSN and MPS. In the category of ethics for contract doer, the DSN mentions 31 times while MPS states 12 times. However, on the ethical purpose of contract, the DSN only mentions one while MPS does not save any.

Graph 2
The Comparison of Ethics in the DSN and MPS Decision



The above graph shows that the composition of the Islamic Ethics in MPS is more dominant than the DSN. In the MPS's fatwa, the number of Islamic ethics reaches 52%, while the DSN presents 43%. In terms of the composition of ethics related to the principle of contract, the MPS is more dominant, with a total of 19%, whereas the DSN accumulates 8%. On the contrary, the number of Fatwa by the DSN on defining the object of ethics reaches 28%, while the MPS takes 10%. In the end, the ethics of purpose is mentioned 1% in the DSN and is not mentioned in the MPS.

The Islamic ethics in the fatwa by the DSN and MPS is dominated by the prohibition of *riba*. In this case, goodness and welfare is ranked as the second category of Sharia after the prohibition of *riba*. The ethics of cooperation and social interests is mentioned several times. In the same way, the principle of freedom, willingness, and welfare are mostly more dominant than other principles. Those principles are mainly derived from the norms set out in the Qoran, the hadith and Jurisprudence.

Table 1
The Comparison of Ethics in the Fatwa Decision and Consideration

No	Category	DSN				MPS			
		Conside- ration	%	Decision	%	Conside- ration	%	Decision	%
1	Sharia	191	74%	67	26%	51	61,40%	32	38,60%
2	Principle	247	95,40%	12	4,60%	33	73,30%	12	26,70%
3	Aqid	126	80,30%	31	19,70%	17	58,60%	12	41,40%
4	Object	8	15,70%	43	84,30%	12	66,70%	6	33,30%
5	Purpose	1	50%	1	50%	0	0	0	0
6	Business	0	0	0	0	2	100%	0	0
7	Total	573	78,80%	154	21,20%	115	65%	62	35%
8	Total DSN+MPS	Consideration 688 (76%)				Decision 216 (24%)			

The table presents the greater portion of ethics in the consideration level than the decision level, 76% in the consideration and 24 % in the consideration. The ethics in the fatwa consideration by the DSN results in 78.8 % while in the fatwa decision reaches 21.2 %. At last, the ethics in the fatwa consideration by the MPS reaches 65 % while its decision takes 35%.

G. Conclusions

The Islamic economics ethics in the DSN's and MPS's fatwa is more prominent in the normative aspect. The ethics is commonly found in the

consideration level and the legal basis of the fatwa. On the contrary, in the decision level, the economics ethics is not stated as much as that of consideration. This suggests that the normativity of ethics derives from Islamic legal sources such as the Quran, the Hadith and Jurisprudence. Only the ethics of the object of contract in the DSN's fatwa is more commonly found in the decision than the consideration.

The economic ethics supports the aspects of fulfilling the provisions of Sharia, especially avoiding the emergence of *riba*. However, because the ethics are dominant in the legal consideration, the implementation of Sharia compliance requires commitment for parties that do contract. The Professionalism of Islamic supervision becomes imperative to assess Islamic economics practices in terms of its implementation of ethics.

The result of this study opens up opportunities for further research which is particularly concerned with the application of economic ethics in the contract and its implementation in Islamic financial institutions. To this end, the authority of fatwa, in this case the DSN, MPS and others are expected to give attention to other economics ethics, especially on the purpose of contract due to the lack of concerns.

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