

# Istinbath Methodology of DSN-MUI: Integrating Classical Islamic Jurisprudence with Contemporary Needs

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## Abstract

The objective of this paper is to examine the methodology employed by the National Sharia Board of the Indonesian Council of Ulama (DSN-MUI) in deriving legal rulings (*istinbath*) within the dynamic framework of the intersection between classical Islamic jurisprudence and contemporary societal needs. The study seeks to provide a detailed analysis of the approach adopted by the DSN-MUI, with a particular emphasis on its predominant utilization of the *Intiqā'i* or *Takhyiri* framework. This approach underscores the significance of considering *maslaha* (public interest) and *makharij* (solutions) over *tarjih* (preferential selection based on the strongest evidence). Employing a qualitative research methodology, the paper conducts a thorough content analysis of the fatwas issued by the DSN-MUI and relevant scholarly literature to delve into their *istinbath* process. The research findings suggest that the DSN-MUI occasionally resorts to collective *ijtihad* (*ijtihad jama'i*) in exceptional circumstances, diverging from the prevailing consensus on issues such as non-cash gold transactions and the conversion of *tabarru'* contracts into *mu'awadhat* contracts. By shedding light on the application of the principles of *tafriq al-halal wa-al-haram* (differentiation between what is permissible and impermissible) and *al-'ibrah fi al-'uqud bi al-alfazh wa al-mabani* (legal reasoning in accordance with the teachings of Imam Shafii), this study significantly contributes to the field of Islamic jurisprudence. Moreover, this research offers a comprehensive analysis of the *istinbath* methodology of the DSN-MUI, providing valuable insights into how classical Islamic jurisprudence is adapted to address contemporary economic and social challenges in the Indonesian context.

**Keywords:** Islamic jurisprudence, *ijtihad intiqā'i/takhyiri*, *maslaha*, *makharij*

## 1. Introduction

This study aims to investigate the potential application of *istinbath* methodology within the classical Islamic legal framework to address contemporary needs. The challenge in this context lies in reconciling the longstanding principles of *fiqh muamalah* with the constantly evolving

economic, social, and technological landscape, particularly in modern Muslim societies. It is crucial to ensure the continued relevance and applicability of the principles of *fiqh muamalah* in navigating the various dynamics of contemporary life.<sup>1</sup>

A specific area requiring further exploration is the methodology employed by the DSN-MUI in issuing *fatawa*. These findings are not solely based on the most compelling evidence (*tarjih*) but also take into account considerations of public interest and practical solutions (*makharij*). This study underscores the DSN-MUI's utilization of *ijtihad jama'i* in specific instances, such as noncash gold transactions and the conversion of *tabarru'* contracts into *mua'wadhat* contracts. This divergence from the mainstream scholarly opinion raises inquiries regarding the methodology and principles employed by the DSN-MUI in such contexts.<sup>2</sup>

The originality of this article lies in its thorough analysis of the DSN-MUI's *istinbath* methodology, which integrates classical and contemporary approaches in its *fatawa*. In contrast to prior studies focusing predominantly on theoretical or historical aspects of Islamic law, this article offers fresh insights into the practical application of principles such as *tafriq al-halal 'an al-haram* and *al-'ibrah fi al-'uqud bi al-alfazh wa al-mabani* within the modern economic and social milieu in Indonesia. This contributes uniquely to the understanding of how Islamic law adapts to contemporary challenges.<sup>3</sup>

The purpose of this article is to explore and explain the methodology used by DSN-MUI in issuing *fatawa*, particularly how they integrate the *intiqā'i* or *takhyiri* *ijtihad* framework with the benefit and *makharij* approaches. This article aims to provide a deeper understanding of the *istinbath* process used by DSN-MUI and how the methodology is applied to address contemporary issues faced by the Muslim community in Indonesia.

The objective of this paper is to examine and elucidate the methodology employed by DSN-MUI in issuing *fatawa*, particularly the integration of the *intiqā'i* or *takhyiri* *ijtihad* framework with the benefit and *makharij* approaches. The study aims to provide a deeper comprehension of the *istinbath* process utilized by DSN-MUI and how the methodology is applied

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<sup>1</sup> Jaih Mubarak and Shaifurrokhman Mahfudz, "Best Practice Review: Enhancing the Quality of Shariah Economist Scholars," *Indonesian Journal of Islamic Economic Law* 1, no. 1 (December 7, 2023): 1–10, <https://doi.org/10.23917/ijoe.v1i1.3433>; Euis Amalia and Eltom Ishaq Osman Musa, "Economic Compatibility of Islamic Economy and Pancasila: Implications for the Postgraduate Curriculum," *Indonesian Journal of Islamic Economic Law* 1, no. 1 (December 7, 2023): 11–22, <https://doi.org/10.23917/ijoe.v1i1.3434>.

<sup>2</sup> Zainal Arifin Hossein and M Mahmudhassan, "Legal Disruption and Sharia Arbitration: Navigating Change, Measuring Impact, and Fostering Innovation," *Indonesian Journal of Islamic Economic Law* 1, no. 1 (December 7, 2023): 39–49, <https://doi.org/10.23917/ijoe.v1i1.3436>.

<sup>3</sup> Amalia and Musa, "Economic Compatibility of Islamic Economy and Pancasila: Implications for the Postgraduate Curriculum."

to address contemporary issues confronting the Muslim community in Indonesia.<sup>4</sup>

This study aims to evaluate the effectiveness of the DSN-MUI's *istinbath* methodology, which prioritizes a benefit-oriented approach and practical solutions over the pursuit of the strongest arguments. It is hypothesized that this methodology serves as an effective mechanism for addressing the contemporary needs of Muslim communities in Indonesia. The research suggests that this approach is not only relevant but also essential in ensuring the adaptability of Islamic law and its tangible benefits in the modern context.<sup>5</sup>

## 2. Literature Review

Prior studies provide insights into the formulation of DSN-MUI fatwas, specifically through *ijtihad intiqā'i* or *takhyiri*, *maslaha*, and *makharij*, which serve as foundational methods for deriving legal rulings in addressing Islamic economic challenges in Indonesia.

Yusup (2019) conducted an initial investigation titled "Multi Contract as a Legal Justification of Islamic Economic Law for Gold Mortgage Agreement in Islamic Bank." While not explicitly employing *intiqā'i* or *takhyiri* frameworks concerning gold deposit fees, Yusup's research illustrates that DSN-MUI integrates *maslaha* (public interest) and *makharij* (solutions) into their fatwas on gold pawn financing. The criteria of *maslaha* are determined based on the accessibility of quick cash for customers' urgent needs such as education, business, or healthcare expenses. Additionally, DSN-MUI utilizes a tiered system for gold storage fees (*makharij* parameter), balancing competitive fees to attract customers and generate profits for Islamic banks<sup>6</sup> However, Yusup's study does not delve into the standardized methodologies and criteria used by DSN-MUI to determine *maslaha* and *makharij*, nor does it offer comparative insights with other fatwa institutions.<sup>7</sup>

Nurjaman (2021) demonstrates that DSN-MUI fatwas have influenced the behavioral norms within the Islamic economic sector, particularly in reforming negative practices. The prohibition of usury, for instance, as stipulated in the fatwas, has significantly bolstered the growth of Islamic banking in Indonesia, underscoring the role of DSN-MUI fatwas not only as

<sup>4</sup> Ahmad Imam Hambali and Aisha Bahaeldin Ebrahim Ali, "Social Funding Programs in Non-Depository Credit Cooperatives: A Perspective on Positive Law and Sharia Principles," *Indonesian Journal of Islamic Economic Law* 1, no. 1 (December 7, 2023): 50–59, <https://doi.org/10.23917/ijoe.v1i1.3439>.

<sup>5</sup> Isman and Ahmad Zainul Muttaqin, "Innovative Legal Modeling for Interdisciplinary Studies on Law and Economic Behavior," *Indonesian Journal of Islamic Economic Law* 1, no. 1 (December 7, 2023): 60–71, <https://doi.org/10.23917/ijoe.v1i1.3437>.

<sup>6</sup> Deni Kamaludin Yusup, "Multi Contract as A Legal Justification of Islamic Economic Law for Gold Mortgage Agreement in Islamic Bank," *Jurnal Ilmiah Peuradeun* 7, no. 1 (January 30, 2019): 1, <https://doi.org/10.26811/peuradeun.v7i1.318>.

<sup>7</sup> Muhammad Ibnu Qayyim Al-Jauziyah, *I'lam Al-Muwaqqi'in. Juz III* (Beirut: Dar- El-Fikir, 1975).

interpretations of Islamic law but also as agents of positive social change. This underscores the necessity for DSN-MUI to continually adapt to evolving social and cultural landscapes, leveraging its autonomy and credibility in fatwa formulation. However, there remains a need for broader public awareness and education on DSN-MUI fatwas and their implications, particularly concerning their *istinbath* methodologies, in terms of the framework of the *intiqā'i ijtihad* method and the parameters of *maslaha* and *makharij* that have not yet been formulated.<sup>8</sup>

Reny's research (2021) concludes that DSN-MUI utilizes *intiqā'i* and *takhyiri* frameworks, involving systematic *ijtihad* steps in the absence of explicit *nash* related to contemporary issues. This approach integrates diverse scholarly opinions to arrive at comprehensive decisions, prioritizing Indonesia's current socioeconomic conditions and the *ummah's* welfare. Such a framework aims to uphold Sharia principles like justice, benefits, and preservation of religious values in economic matters.<sup>9</sup> This indicates that the implementation of DSN-MUI's fatwa-making aligns with Reny's research findings. As noted earlier, this institution integrates *ijtihad*, *maslaha*, and *maqashid sharia* into its fatwas. However, Reny's study lacks a comprehensive analysis of the criteria used by DSN-MUI to determine *maslaha* and *maqashid sharia*. Instead, it identifies situations where DSN-MUI is compelled to depart from the predominant view. These instances include novel issues not covered in classical texts, the need for DSN-MUI to adopt alternative approaches in consideration of *maslaha*, technological advancements, or socioeconomic changes necessitating revisions to previous fatwas.<sup>10</sup>

Moreover, T. Hidayati (2021) argues that DSN-MUI's framework for *ijtihad intiqā'i* or *takhyiri* emphasizes Sharia-based risk management, particularly in the context of digitalization and the Industrial Revolution 4.0. This is evident from fatwas such as No. 116/DSN-MUI/IX/2017 on electronic money and No. 117/DSN-MUI/II/2018 on IT-based financing, which prioritize Sharia compliance, risk mitigation, and public benefit.<sup>11</sup> The findings of this research illustrate that DSN-MUI places significant emphasis on integrating Sharia principles and risk management comprehensively within the financial sector. This approach contrasts with that of other fatwa institutions, which often prioritize the legal dimensions of issues without

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<sup>8</sup> Al-Jauziyah.

<sup>9</sup> Elsy Renie, "The Urgency of Fatwa in The Law Of Sharia Economics In Indonesia," *JURIS (Jurnal Ilmiah Syariah)* 20, no. 2 (December 15, 2021): 201, <https://doi.org/10.31958/juris.v20i2.4059>.

<sup>10</sup> Isman and Yahya, "Istiqa' Al-Ma'nāwī: A Multicultural Judicial Reasoning," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (2022), <https://doi.org/10.18326/ijtihad.v22i1.95-116>.

<sup>11</sup> Tri Hidayati and Muhammad Syarif Hidayatullah, "Urgensi Fatwa DSN-MUI Mengenai Manajemen Risiko Pembiayaan Berbasis Syariah," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 2 (December 1, 2021): 201–20, <https://doi.org/10.24090/mnh.v15i2.4641>.

delving deeply into risk management considerations. In formulating its fatwas, DSN-MUI carefully considers *maslaha* (public interest) and *makharij* (solutions), ensuring that its solutions are not only compliant with Sharia but also practical and relevant in contemporary business contexts.<sup>12</sup>

The criteria and standards utilized by DSN-MUI to determine *maslaha* and *makharij* encompass core Sharia principles such as the prohibition of usury, *gharar*, and *maysir*, while emphasizing transparency, fairness, and benefits for all parties involved. Moreover, DSN-MUI employs instruments like *ta'zir* (sanctions) and *ta'widh* (compensation) to manage moral hazards among customers, directing funds from sanctions towards social causes rather than the bank's income. The study also reveals instances where DSN-MUI may diverge from majority opinions in favor of more beneficial alternatives, showcasing flexibility in applying Sharia principles to evolving contexts.<sup>13</sup>

Mahmudah (2022) highlights DSN-MUI's operational framework in applying *ijtihad intiqā'i* or *takhyiri*, adjusting fatwas to meet Sharia principles and contemporary needs. For instance, DSN Fatwa No. 137/DSN-MUI/IX/2020 on sukuk issuance ensures Sharia compliance while addressing economic realities and societal benefits, reflecting DSN-MUI's rigorous criteria for *maslaha* and *makharij*.<sup>14</sup> This asserts that the DSN-MUI fatwa not only emphasizes legal aspects but also integrates Sharia principles and risk management comprehensively. This distinguishes it from other institutions that may place less emphasis on risk management and long-term benefits. Additionally, Mahmudah highlights the *makharij* parameter in DSN-MUI fatwas, indicating that Sukuk serves as a tool to enhance alternative financing for the state budget, foster Islamic financial markets, and optimize the use of state resources. The primary criteria for evaluating *maslaha* and *makharij* include adherence to fundamental Sharia principles (such as prohibiting usury, *gharar*, and *maysir*), transparency and fairness in transactions, long-term societal and economic benefits, the ability to prevent harm (*mafsadat*), facilitate convenience in emergencies, and incorporate Sharia aspects into contemporary contexts.<sup>15</sup>

Azharsyah Ibrahim's research (2021) does not explicitly examine the utilization of the *intiqā'i* or *takhyiri* ijtihad frameworks of the DSN-MUI fatwa. Nevertheless, the study effectively identifies instances where DSN-MUI fatwas allow for alternative approaches, reflecting the concept of *takhyir*, or choice. For instance, it permits the *wakalah* financing model without *'urbun*, contrary to the predominant opinion requiring *'urbun* with *wakalah*. This allowance is justified by practical considerations within the fatwa

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<sup>12</sup> Hidayati and Hidayatullah.

<sup>13</sup> Hidayati and Hidayatullah.

<sup>14</sup> Siti Nur Mahmudah, Muhammad Lathoif Ghozali, and Iskandar Ritonga, "IMPLEMENTATION OF SHARIA MAQASHID ON SUKUK BASED ON FATWA DSN-MUI/IX/2020," *Jurnal Ilmiah Islam Futura* 22, no. 2 (August 3, 2022): 139, <https://doi.org/10.22373/jiif.v22i2.12296>.

<sup>15</sup> Mahmudah, Ghozali, and Ritonga.

framework, emphasizing the prioritization of *maslaha* (public interest). Another example includes the rescheduling of debt payments, permitted under DSN fatwa No. 48/2005, despite potentially higher total costs for customers. This demonstrates the flexibility of fatwas, which may be influenced by considerations of *maslaha* during challenging circumstances.<sup>16</sup>

This study does not directly compare DSN-MUI fatwas with those issued by other fatwa institutions. Instead, its primary focus lies in the *tahqiq* process of *maslaha* based on *maqasid sharia*, allowing for an in-depth analysis of how DSN-MUI fatwas consider *maslaha* and the objectives of Islamic law. The approach adopted by DSN-MUI appears to prioritize efficiency in pursuing *maslaha*, as asserted by Ibrahim, who suggests that deviations from the ideal Sharia model are pragmatically strategic to achieve dual objectives. Despite the recognition that determining *maslaha* and *maqasid sharia* involves balancing practicality and sharia compliance, safeguarding customers through flexibility in debt repayment rescheduling during difficult times emerges as a crucial priority in the *maslaha* analysis.<sup>17</sup>

In summary, while these studies contribute to understanding DSN-MUI's role in shaping Islamic economic practices, they vary in their exploration of DSN-MUI's *istinbath* methodologies, particularly in evaluating *maslaha* and *makharij* criteria. Future research could benefit from comparative analyses across different fatwa institutions to enhance insights into DSN-MUI's distinctive approaches and their implications for global Islamic finance.

### 3. Research Method

This study aims to investigate and clarify the methodology employed by the National Sharia Council-Majelis Ulama Indonesia (DSN-MUI) in issuing fatawa (*istinbath*), integrating classical Islamic jurisprudence with contemporary needs. This research adopts a qualitative approach, employing content analysis of DSN-MUI fatwa texts alongside relevant scholarly literature to explore their *istinbath* process.<sup>18</sup>

Data were gathered through an extensive literature review, utilizing data triangulation to corroborate findings across multiple sources, including classical texts, contemporary studies, and recent academic articles.<sup>19</sup> This

<sup>16</sup> Azharsyah Ibrahim and Abdul Jalil Salam, "A Comparative Analysis of DSN-MUI Fatwas Regarding Murabahah Contract and the Real Context Application (A Study at Islamic Banking in Aceh)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 5, no. 1 (June 30, 2021): 372, <https://doi.org/10.22373/sjhk.v5i1.8845>.

<sup>17</sup> Ibrahim and Salam.

<sup>18</sup> Isman and Ahmad Zainul Muttaqin, "Innovative Legal Modeling for Interdisciplinary Studies on Law and Economic Behavior," *Indonesiaon Journal of Islamic Economic Law* 1, no. 1 (January 2024): 50–65; Isman, Ahmad Imam Hambali, and Aisha Baha Eldeen, "Transcendental Law and Legal Reform in the Digital Era," 2024, 485–93, [https://doi.org/10.1007/978-3-031-49544-1\\_44](https://doi.org/10.1007/978-3-031-49544-1_44).

<sup>19</sup> Sakhowi Sakhowi, "Taqrin Method of Qanun Jinayah and Problems of Its Implementation in Aceh, Indonesia," *JIL: Journal of Islamic Law* 3, no. 2 (2022), <https://doi.org/10.24260/jil.v3i2.817>.

research encompasses analysis of classical Islamic legal literature, contemporary studies on economic and social issues in Indonesia, and recent research addressing challenges and opportunities related to DSN-MUI fatwas.<sup>20</sup> These insights contribute significantly to Islamic jurisprudence by examining the application of fundamental principles such as *tafriq al-halal wa-al-haram* (differentiation between lawful and prohibited) and *al-'ibrah fi al-'uqud bi al-alfazh wa al-mabani* (legal reasoning according to Imam Shafii's teachings) in the context of modernity. Additionally, the research explores the use of collective *ijtihad (ijtihad jama'i)* in extraordinary circumstances and illustrates how classical Islamic jurisprudence is adapted to contemporary economic and social contexts in Indonesia.<sup>21</sup>

#### 4. Results and Discussion

Based on a comprehensive literature review, the DSN-MUI's *manhaj ifta'* (issuance of legal opinions) aims to ensure the accuracy, comprehensiveness, contextual relevance, and practical applicability of its fatwas. This methodology underscores the credibility and authoritative status of DSN-MUI in the realm of Shariah economic law in Indonesia. The ensuing discussion will first present an overview of findings related to the ifta' methodology, followed by an analysis that integrates insights from this study with those of prior research referenced in the literature review.

##### 4.1. *Manhaj Ifta'* DSN-MUI and the Process of Issuing Fatwas

The methodology employed by the DSN-MUI for issuing fatwas is outlined in the DSN-MUI *Manhaj Ifta'*. The purpose of this *Manhaj Ifta'* is to ensure that the fatwas issued by the DSN-MUI are accurate, comprehensive, contextualized, and readily applicable. This framework aims to enhance the credibility and legitimacy of DSN-MUI as the fatwa authority in Indonesia.

The DSN-MUI plays a significant role in providing Sharia guidance for Muslims in Indonesia through the issuance of fatwas. To guarantee the accuracy, comprehensiveness, and contextualization of these fatwas, the DSN-MUI devised the *Manhaj Ifta'*, a systematic methodological framework.

The DSN-MUI's *Manhaj Ifta'* consists of 12 interrelated methodological branches:

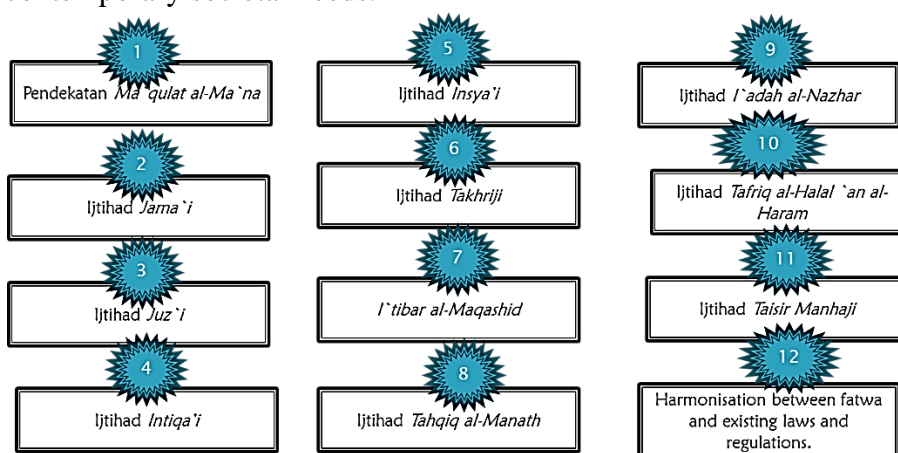
1. *Ma'qulat al-Ma'na*: Emphasizes achieving an in-depth understanding of the meanings of Qur'anic and hadith texts.
2. *Ijtihad Jama'i*: Involves deliberation among scholars who are experts in related fields to reach a fatwa conclusion.

<sup>20</sup> H. Y. Sonafist et al., "Ibn Al-Muqaffa's Proposal for Taqni'n and Its Synchronization with Islamic Law Codification in Indonesia," *Samarah*, 2020, <https://doi.org/10.22373/sjhk.v4i2.7864>.

<sup>21</sup> Sanne Taekema, "Methodologies of Rule of Law Research: Why Legal Philosophy Needs Empirical and Doctrinal Scholarship," *Law and Philosophy* 40, no. 1 (2021), <https://doi.org/10.1007/s10982-020-09388-1>.

3. *Ijtihad Juz'i*: Conducted individually by a scholar who is an expert in the relevant field but recognized only locally.
4. *Ijtihad Intiqa'i*: Adheres to the opinions of previous scholars who are regarded as credible and possess a robust scientific reputation.
5. *Ijtihad Insya'i*: Formulates fatwas based on the understanding and reasoning of contemporary scholars, considering evolving social and cultural contexts.
6. *Ijtihad I'adah al-Nazhar*: Considers the traditions and customs of the community in line with Islamic Sharia when formulating fatwas.
7. *Ijtihad Takhriji*: Connects Qur'anic and hadith texts with social and contemporary realities to identify appropriate solutions to current problems.
8. *Ijtihad Tafriq al-Halal 'an al-Haram*: Distinguish between halal and haram in complex and ambiguous contexts, taking into account various aspects and arguments of Sharia.
9. *Ijtihad Taysir Manhaji*: Formulates fatwas in a manner that is readily comprehensible and practical for the community, facilitating their extensive implementation.
10. *Tahqiq al-Manath*: Seeks to understand the purpose and underlying wisdom of Islamic law, ensuring that the resulting fatwa addresses both legal aspects and inherent values and benefits.
11. Harmonization of Fatwas with Laws and Regulations: Aligns DSN-MUI fatwas with applicable laws and regulations in Indonesia to support law enforcement and social order.
12. *I'tibar al-Maqashid*: Considers the objectives of Sharia (maqāsid al-sharia) in formulating fatwas, ensuring that the resulting fatwas focus not only on formal legal aspects but also on benefits and humanity.

These methodological approaches collectively ensure that DSN-MUI fatwas are well-rounded, practical, and aligned with both Islamic principles and contemporary societal needs.



**Fig. 1.** *Manhaj Ifta'* (DSN-MUI)



The figure above highlights the predominance of the *ijtihad intiqa'i* (solution method) as the main approach in the *Manhaj Ifta'*. This is supported by several key points: the emphasis on *maslaha* (public interest) and *makharij* (solutions), the use of *ijtihad jama'i* in specific contexts, such as non-cash gold transactions, and the conversion of *tabarru'* contracts into *mu'awadhat* contracts. This suggests a selective approach to methodology and solutions in specific cases based on collective deliberation.

Yusuf Qardhawi defines *ijtihad intiqa'i* as "an attempt to choose a stronger opinion based on in-depth research and assessment," contrasting with simply "following tradition or established opinions without clear reasons." This approach allows for flexibility in adapting to changing times and societal conditions, ensuring that Sharia fatwas remain relevant and applicable.<sup>22</sup>

According to Qardhawi, *ijtihad intiqa'i* involves selecting one opinion from the extensive corpus of fiqh by evaluating and analyzing the existing arguments, both textual and *ijtihadi*. The goal is to ascertain the most compelling opinion aligned with contemporary norms, accessible to the community, consistent with Sharia principles, and conducive to achieving Sharia objectives. *Ijtihad Intiqa'i* can be seen as fundamentally *ijtihad maqashidi*, but with a broader operational framework.

The framework's initial phase involves examining the arguments and evidence to conduct a comprehensive analysis of the rationale behind different fiqh opinions. Fiqh opinions lacking clear reasons or based solely on a particular school of thought are not used as proof. More relevant opinions to current times and community conditions are prioritized, considering convenience and benefit for the community and the objectives of Sharia. Additionally, opinions from various madhhabs can be adopted on different issues, allowing flexibility in following different schools of thought as needed. For example, one might follow Maliki madhhab on one issue and Hanafi madhhab on another. Present circumstances and changing conditions that may affect the interpretation of Islamic law are also considered.

An example of a case necessitating an *ijtihad intiqa'i* approach is determining who should be subject to *qisas* in a murder case under duress, due to the varied opinions among *Fuqaha* (Islamic jurist). In-depth judgment is required to determine the most just and appropriate opinion. Modern social, economic, and political changes are often considered in selecting fiqh opinions. For instance, contemporary scientific evidence on the effects of intoxicating substances can inform relevant fatwas. Moreover, fiqh perspectives endorsing a socioeconomically just and equitable system must be considered when determining legal frameworks.<sup>23</sup>

<sup>22</sup> Majma' al-Fiqh al-Islami, *Majalah Majma' Al-Fiqh Al-Islami*, ed. Usamah bin Zahra', 8th ed. (Jeddah: Majma' al-Fiqh al-Islami, n.d.).

<sup>23</sup> Qardhawi.

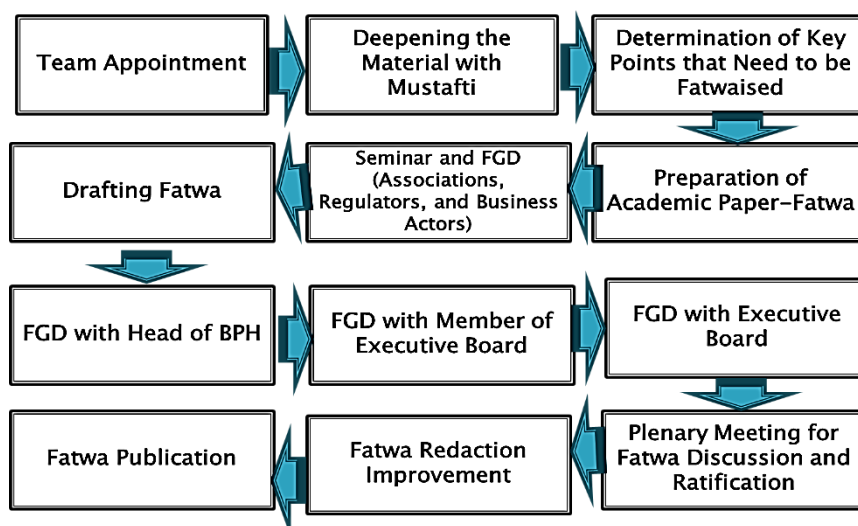
*Ijtihad intiqā'i* represents the most prevalent approach to *manhaj ifta'* within the DSN-MUI context. Its prevalence is evidenced by the emphasis on *maslaha* and *makharij*, its use in specific instances, and the fatwa determination process reflecting a selective methodology appropriate for given contexts.

The overarching objective of the DSN-MUI's *manhaj ifta'* is to guarantee the precision and reliability of fatwas, ensuring they are based on a scientific, credible, and verified methodology, thus gaining acceptance and respect among the Muslim community. The *manhaj ifta'* aims to produce comprehensive and pertinent fatwas addressing contemporary issues in accordance with Islamic Sharia, ensuring their relevance to the current needs and problems of Muslims.<sup>24</sup>

Furthermore, the *manhaj ifta'* promotes deliberation among scholars from diverse religious organizations to achieve consensus on various issues, reinforcing Muslim unity and preventing schisms. The *manhaj ifta'* was devised to facilitate the comprehension and implementation of fatwas by the community, ensuring their extensive applicability and benefit to Muslims. It is evident that a *manhaj ifta'* is required to maintain harmony and balance between fatwas and social and cultural realities.

Additionally, examining the framework of *ijtihad intiqā'i* and its selection of the most appropriate approach of *maslaha* and *makharij* (solution) reveals that it does not employ *tarjih* (finding the strongest argument) but rather selects the opinion that brings about the most benefit and is most likely to be implemented. The drafting flow of fatwas is described as a systematic and comprehensive mechanism for formulating accurate, relevant, and contextual Sharia guidance.

The following figure illustrates the flow as it applies to the DSN-MUI



**Fig. 2.** The Process of Issuing DSN-MUI Fatwa:

<sup>24</sup> Majma' al-Fiqh al-Islami.

To ensure the accuracy, comprehensiveness, and contextualization of fatawa, the DSN-MUI employs a systematic and structured approach. The process begins with identifying the need for fatawa, either initiated by the organization in response to contemporary issues or requested by various parties such as industries, associations, or regulators seeking guidance on specific Sharia-related matters.<sup>25</sup>

The next phase involves a preliminary evaluation of the fatwa request. Formal requests must include detailed information about the issue and the rationale for seeking a fatwa. The DSN-MUI reviews these requests to determine their eligibility for further action.

An example of this process is the DSN-MUI fatwa on Sharia Principle-Based Financing for Remote Communities (PPMSJT), initiated to address the financial needs of remote communities according to Islamic principles. Similarly, the fatwa on *i'arah* contracts was requested by the Islamic finance industry to develop new contracts in line with Sharia.

The third stage involves forming a team of scholars and experts to conduct an in-depth study of the issue, referencing the Qur'an, hadith, and other authentic Sharia sources. This comprehensive analysis considers various scholarly opinions to identify key points requiring authorization, which are then formulated into clear and logical questions for the fatwa discussion.<sup>26</sup>

The fourth stage is the drafting and ratification of the fatwa. The expert team drafts the fatwa, ensuring it adheres to Sharia principles, presents logical arguments, and reaches clear conclusions based on valid Sharia evidence and prominent scholarly opinions.

The fifth stage comprises seminars and focus group discussions (FGDs) to gather input and suggestions from stakeholders, including academics, practitioners, and community representatives. The expert team carefully analyzes these inputs before finalizing the fatwa.<sup>27</sup>

The final fatwa is formulated to be comprehensible and practical for community implementation.<sup>28</sup> Literature reviews and research findings highlight the DSN-MUI's role in bridging the gap between classical fiqh and contemporary needs through the *intiqā'i* or *takhyiri ijtihad* approach, integrating *maslaha* and Maqasid Sharia in legal reasoning. This approach is consistent with researchers like Reny, T. Hidayati, Mahmudah, and

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<sup>25</sup> Jaih Mubarak dan Hasanudin, "Fiqh Muamalah Maliyyah (Akad Ijarah Dan Jualah)," Bandung, Simbiosia, 2018.

<sup>26</sup> Renie, "The Urgency Of Fatwa In The Law Of Sharia Economics In Indonesia."

<sup>27</sup> Moh. Asep Zakariya Ansori et al., "Axiological Harmonization of Sharia Economic Law Supremacy and DSN-MUI Fatwa in Indonesia," *Al Mashalih - Journal of Islamic Law* 4, no. 2 (2023), <https://doi.org/10.59270/mashalih.v4i2.215>.

<sup>28</sup> Ansori Ansori, "Position of Fatwa in Islamic Law: The Effectiveness of MUI, NU, and Muhammadiyah Fatwas," *Ijtihad : Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (July 29, 2022): 53–72, <https://doi.org/10.18326/ijtihad.v22i1.53-72>.

Azharsyah Ibrahim, who emphasize the consideration of socioeconomic contexts and technological advances.<sup>29</sup>

The implementation of Fatwa No. 116/DSN-MUI/IX/2017 on electronic money and Fatwa No. 117/DSN-MUI/II/2018 on technology-based financing services demonstrates the successful integration of Sharia principles with risk management, adhering to the prohibition of *riba*, *gharar*, and *maysir* while promoting the public good.<sup>30</sup>

The DSN-MUI fatwas are effective instruments of Islamic law due to their adaptability to Sharia principles and contemporary circumstances. This flexibility allows deviations from majority opinions (*jumhur*) when more favorable for public interest, as seen in *wakalah* financing without ‘*urbun* and debt payment rescheduling.<sup>31</sup>

Research by Mahmudah (2022) supports this conclusion, finding that DSN-MUI fatawa are crafted to serve public interest while adhering to fairness, transparency, and long-term societal benefits.<sup>32</sup>

However, some aspects of DSN-MUI's determination of *maslaha* and *makharij* require further empirical research, particularly in the face of technological advancements and dynamic socioeconomic conditions. Despite these challenges, the DSN-MUI's use of *intiqā'i* and *takhyiri* ijthad ensures the relevance and applicability of Sharia law in a modern context, though further research is needed to understand their legal reasoning criteria and processes fully.<sup>33</sup>

#### **4.2. DSN-MUI Istinbath Methodology: Classical Islamic Jurisprudence and Contemporary Needs**

This section delves into the methodology employed by the Indonesian Council of Ulama's National Sharia Board (DSN-MUI) for deriving legal rulings (*istinbath*), focusing on the interplay between classical Islamic jurisprudence and contemporary societal needs. It highlights how DSN-MUI integrates principles such as *tafriq al-halal wa-al-haram* (distinguishing between permissible and impermissible) and *al-'ibrah fi al-'uqud bi al-alfazh wa al-mabani* (legal reasoning based on Imam Shafii's teachings). The analysis provides insights into how classical Islamic jurisprudence is adapted to address contemporary economic and social realities in Indonesia.

<sup>29</sup> Rokani Darsyah, “Penggunaan Kaidah Ushul Dan Kaidah Fiqih Dalam Pertimbangan Hukum Putusan Ekonomi Syariah” (UIN Syarif Hidayatullah, 2021).

<sup>30</sup> Asman and Tamrin Muchsin, “Maqasid Al-Shari’ah in Islamic Law Renewal: The Impact of New Normal Rules on Islamic Law Practices during the Covid-19 Pandemic,” *Mazahib Jurnal Pemikiran Hukum Islam* 20, no. 1 (2021), <https://doi.org/10.21093/mj.v20i1.2957>.

<sup>31</sup> Darsyah, “Penggunaan Kaidah Ushul Dan Kaidah Fiqih Dalam Pertimbangan Hukum Putusan Ekonomi Syariah.”

<sup>32</sup> Darsyah.

<sup>33</sup> Hambali and Ali, “Social Funding Programs in Non-Depository Credit Cooperatives: A Perspective on Positive Law and Sharia Principles.”

The *ijtihad intiqā'i* framework, adopted by the Indonesian Ulema Council (MUI), serves as a means to bridge the gap between classical fiqh and contemporary needs by adhering to several key principles. *Ijtihad intiqā'i* involves following the opinions of previous scholars who are credible and possess a robust scientific reputation. For instance, in the context of gold pawn financing, DSN-MUI employed this approach by considering public interest and solutions in their fatwa. They implemented a tiered system to adjust the gold storage fee, maintaining product attractiveness for customers and profitability for Islamic banks.

The principle of *tafriq al-halal 'an al-haram* helps distinguish between halal and haram in complex contexts, allowing DSN-MUI to ascertain the legitimacy of gold pawn financing practices through comprehensive Sharia analysis. Similarly, the principle of *al-'ibrah fi al-Uqud bi al-Alfazh wa al-Mabani* is based on the understanding that the general meaning and purpose of Sharia can be discerned from legal texts. DSN-MUI applies this principle to ensure their fatawa are compliant with Sharia texts and relevant to contemporary social and economic conditions.

Yusup's (2019) research on DSN-MUI's approach to gold pawn financing corroborates that DSN-MUI actively considers *maslaha* (public good) and *makharij* (solutions) in formulating their fatawa, in line with the principles of *intiqā'i ijtihad*. While the research does not directly compare DSN-MUI's approach with other fatwa institutions, it provides valuable insights into their process and considerations for contemporary contexts.<sup>34</sup>

The implementation of the *intiqā'i ijtihad* framework and principles like *tafriq al-halal wa al-haram* and *al-'ibrah fi al-uqud bi al-alfazh wa al-mabani* by DSN-MUI exemplifies the reconciliation of classical Islamic law with contemporary needs, particularly in gold pawn financing. However, Yusup's (2019) research identifies challenges to the credibility of the *ijtihad intiqā'i* model, particularly regarding consistency and transparency in fatwa decision-making. This is significant as there is a lack of comparative research examining DSN-MUI fatawa and those of other fatwa institutions, especially with the increasing prevalence of cross-border economic transactions.<sup>35</sup>

Nurjaman's (2021) research, when considered alongside previous findings, supports the notion that DSN-MUI navigates legal intricacies through its fatwa issuance. Nurjaman's findings show that DSN-MUI fatawa, such as the prohibition of usury, significantly influences social behaviour and drives transformation within the Islamic banking sector and other Islamic economic industries. These fatawa not only interpret Islamic law but also

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<sup>34</sup> Yusup, "Multi Contract as A Legal Justification of Islamic Economic Law for Gold Mortgage Agreement in Islamic Bank."

<sup>35</sup> Afief El Ashfahany, Dinda Ayu Siti Mutmainah, and Isman, "Why Non-Muslims Choose Islamic Banking. Extended Theory of Planned Behavior: A Moderating Factor of Islamic Bank Knowledge," *Banks and Bank Systems* 18, no. 3 (2023), [https://doi.org/10.21511/bbs.18\(3\).2023.10](https://doi.org/10.21511/bbs.18(3).2023.10).

foster positive social change, as seen in the modification of detrimental community practices to align with Sharia principles.

In the context of Islamic banking, Nurjaman confirms that DSN-MUI fatawa are practical and relevant. The methodology used to examine formal fiqh law must align with *maslaha* and evolving social contexts to ensure the efficacy of the *ijtihad* approach in Indonesia. While current research highlights the significant impact of DSN-MUI fatawa on social and economic change, further research is needed to deepen the understanding of the *ijtihad intiqa'i* methodology and the legal rules used by DSN-MUI. This will provide a comprehensive understanding of the institution's distinctive approach in navigating legal *istinbath*.

## 5. Conclusion

This section presents the conclusions derived from the research. Firstly, the *manhaj ifta'* of the DSN-MUI aims to ensure the accuracy, comprehensiveness, contextual relevance, and practicality of the *fatawa* issued. This objective includes efforts to uphold the credibility and legitimacy of the DSN-MUI as an authoritative institution in Islamic economic law in Indonesia. Additionally, the *manhaj ifta'* seeks to adapt *fatawa* to the evolving needs and social conditions of the Indonesian population. The implementation of DSN-MUI's *manhaj ifta'* underscores the importance of integrating classical Sharia law principles with contemporary requirements. The prevalent *ijtihad intiqa'i* approach demonstrates the adaptability of Sharia law through the consideration of *maslaha* and *makharij*. This illustrates the DSN-MUI's contribution to facilitating economic and social transitions under Sharia principles. Furthermore, the DSN-MUI *fatawa*, as evidenced by several case studies, has successfully influenced Islamic economic practices in Indonesia by promoting the adoption of Islamic principles in the banking and finance sector. This has positively impacted the social and economic behaviour of the community.

The study revealed that although the DSN-MUI has incorporated contemporary principles into its Islamic legal methodology, it still faces challenges regarding the consistent application of *ifta'* rules and methodologies in issuing *fatawa*. This challenge necessitates further research to enhance the understanding of the criteria and process of legal *istinbath*.

Further studies are required to assess the extent to which the DSN-MUI approach can be considered an effective model compared to other fatwa institutions in the context of globalization and cross-border economic interactions. This research provides additional insight into the relevance and adaptability of DSN-MUI *fatawa* in a changing social, economic, and technological environment. In conclusion, the DSN-MUI's *manhaj ifta'* not only provides accurate and relevant Sharia legal guidance but also significantly contributes to the positive transformation of Sharia economics in Indonesia.

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