
Analysis of the Basics of Fatwa Gold Credit DSN-MUI Perspective of Qaidah Ushul Fiqh

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Abstract: *The MUI National Sharia Council has issued a fatwa allowing the sale and purchase of gold on credit. This fatwa at first glance contradicts the hadiths which contain the obligation to exchange gold for gold in cash. Until not a few Islamic economists in books or articles criticized the fatwa. One of them is Erwandi Tarmizi in his book entitled 'Harta Haram Muamalat Contemporary'. The author criticizes the fatwa and explains the weak sides of its argument. So this study aims to analyze the extent of the compatibility of the arguments of the MUI National Sharia Council with the rules of Ushul Fiqh related to Islamic economics. The method used is qualitative with a literature approach, and descriptive-qualitative, with a normative approach. The results showed that some of the arguments used by the MUI National Sharia Council that were considered strong were the propositions of the rules of Ushul Fiqh related to 'illat law and the rules of Fiqh related to 'urf. So the opinion of the MUI National Sharia Council in this matter has been in line with the rules of Ushul Fiqh in concluding a law from its propositions.*

Keywords: *fatwa, Islamic law, national sharia council, Islamic economy, halal-haram.*

INTRODUCTION

The science of Ushul Fiqh according to the majority of scholars is the science of the rules by which a mujtahid deduces a shari'a law from detailed postulates for each problem. The benefits of Ushul Fiqh are enormous, both for a mujtahid and a non-mujtahid. For a mujtahid, the science of Ushul Fiqh provides a clear method for him to deduce the law from its source. As for other than mujtahid, the science of Ushul Fiqh explains the methods used by scholars in concluding laws. So that made his heart calm with the knowledge of shari'a that he gained and increased his confidence in the shari'a law that reached him [1].

From this explanation, it can be understood that the most important part of the science of Ushul Fiqh is its rules. The rules of Ushul Fiqh are always used by fatwa experts and fatwa institutions in extracting law from the postulates of shari'a to answer contemporary problems, including those related to the shari'a economy, which is always developing and requires legal clarity [2].

Fatwa in Arabic comes from the word ifta' which has the meaning of explaining the law that is not yet clear. According to the term, fatwa means notification of Allah's law derived from ijthad against the proposition of shari'a by a person who is asked about a matter that occurs.

So the word fatwa according to language is broader than according to terms. Then the person who delivers the fatwa is called the mufti while the one who asks is called the mustafti [2].

From this understanding, it is understood that fatwas are the result of ijthad. The definition of ijthad according to the term is to devote all the ability to know the laws of the Shari'a [1]. Then the scope of ijthad is limited to problems where there is no postulate text explaining the law or problems found in the postulate text but which are not qath'i in nature [3].

According to Shaykh Abu Zahrah, fatwas are more specific than ijthad. Because ijthad is an attempt to explore a law that is asked or not asked. While fatwas exist when there has been a case that is not yet clear the law. The conditions for performing fatwas are more numerous than the requirements for performing ijthad. The conditions of ijthad also apply to fatwas, plus other conditions, namely the necessity of knowing the reality in question, with a deepening of the questioner, and people who live together with the questioner to know the extent of the positive and negative effects of the fatwa to be issued [4]-[6].

Shaykh Abdul Karim Zaidan also argued that ijthad expertise is part of the requirements to become a fatwa expert. Although ijthad expertise is partial, ijthad expertise in all branches of Islamic science is not required. And there is another condition, which is to have the ability to detect treason or deception so that he does not fall into it. He also has a strong stance on his religion, so he is not daunted by reproach and is not influenced by promises or threats. So does having prudence and zuhud and a great fear of Allah. Likewise, it is not required that fatwa experts must be appointed by the government [7].

From this explanation, it can be concluded that ijthad is closely related to fatwas. That ijthad is one of the requirements to become a fatwa expert. A fatwa is a notification of a fatwa expert to a person who asks about the law of a problem.

LITERATURE REVIEW

One contemporary issue that is closely related to the rules of Uhl Fiqh is the law of gold credit. The MUI National Sharia Council has issued a fatwa allowing gold credits. On the other hand, there is a hadith that requires cash when exchanging gold for gold [8], [9].

Erwandi Tarmidzi in his book "Harta Haram Muamalat Contemporary (Harta Haram Muamalat) published in 2018 by Berkat Mulia Insani publisher, explains the weak sides of the MUI DSN fatwa. Especially the weakness in using the rules about 'illat law. That the law changes if 'illat a law is lost. Gold in the time of the Prophet was a medium of exchange and at that time the Prophet forbade exchanging gold for gold if it was not cash [10], [11].

In this era, when gold is no longer a medium of exchange, the ban is gone so it is permissible to buy gold on credit. This is one of the postulates of DSN MUI criticized by Dr. Erwandi Tarmidzi [12], [13].

According to Dr. Erwandi Tarmidzi, the loss of the 'illat of the law of gold does not affect at all the original law, namely the impermissibility of exchanging gold for gold indirectly. So according to him, even though gold is no longer a medium of exchange, it is still forbidden to exchange gold for gold on credit. Dr Erwandi Tarmidhi quoted Shaykh Bayyah in this matter as stating that the 'ill at mustanbathah could not cancel the usury side of gold and silver that had been affirmed by the Prophet. This criticism can be accepted if we use textual methods in understanding the hadith about the usury side of gold if it is exchanged for gold indirectly [14].

Such textual methods do not constitute the methods of the majority of scholars. The majority of scholars view that originally the law contained 'illat which greatly influenced the change of law. Including the hadith which contains the law of exchanging gold for gold cashlessly. The majority of scholars differ only on what the 'illat of law is in the hadith. DSN MUI follows some of the opinions of scholars who state that 'illat is prohibited from exchanging gold for gold indirectly because gold is a medium of exchange.

DSN MUI's fatwa on the permissibility of gold credit is very important to be examined not only because of criticism from researchers but also because DSN MUI's fatwa is a guideline for shari'ah financial institutions, especially in Indonesia. Especially research on the postulates of the fatwa is reviewed from the rules of Ushul Fiqh. Because the rules of Ushul Fiqh are directly related to the method of deducing laws from the text of the Qur'an and Hadith. So that the financial institutions of Shari'ah run on a solid foundation according to Islamic Fiqh. The author examines the classics in the discipline of Ushul Fiqh. So are the classics that discuss the hadith about the usury side of gold [15], [16].

RESEARCH METHODS

The method used in this research is qualitative, with a literature approach, this research is also descriptive-qualitative, with a normative approach because it is based on the study of texts in references to the Qur'an, sunnah, and Islamic law.

The problems and themes discussed are related to the legal conclusions of DSN MUI on the issue of gold credit by the rules of Ushul Fiqh and the opinions of experts in the field of Islamic law.

Table 1. Research Methods and Sequences

No	Types of Research	Model and Description
1	Research Methods	Kualitatif
2	Types of Research	Library Studies
3	Nature of Research	Descriptive and analytical
4	Approach	Normative and content analysis
5	Research Subject	Fatwa DSN-MUI
6	Research Object	Gold Credit
7	Literacy	Fatwa MUI, Qaidah Ushul Fiqh, and opinion ulama

RESULT AND DISCUSSIONS

The Rules of Ushul Fiqh and Their Differences with the Rules of Fiqh

The rules of Ushul Fiqh are a means of deducing laws from a proposition. The rules of Fiqh are a collection of laws that have similarities and return to the same illat (cause of law). The rules of Ushul Fiqh aim to make it easier for a mujtahid to conclude the law while the rules of Fiqh aim to make it easier to collect Fiqh problems that have similarities. The rules of Ushul Fiqh predate the branches of Fiqh problems. While the rules of Fiqh exist after the branches of Fiqh problems [17]-[19].

Division of the Rules of Ushul Fiqh

Shaykh Abdul Wahhab Khallaf divided the rules of Ushul Fiqh into two parts. First, the rules of Ushul Fiqh are related to language. Called Al-Qawaid Al-Ushuliyyah Al-Lughawiyyah. The two rules of Ushul Fiqh are related to the wisdom and purpose of Sharia law. Called Al-Qawaid Al-Ushuliyyah At-Tasyri'iyah. Some divide into four parts, namely the first rules related to postulates. The two rules relate to Sharia laws such as obligatory, sunnah, mubah, makruh and haram. The three rules relate to the designation of the meaning of the postulated text. The four rules are related to ijihad, taklid, tarjih and maslahat [20].

The division of the rules of Ushul Fiqh is considered again in the discussion material in Ushul Fiqh. According to Muhammad Mushthafa Zuhaili, the discussion in Ushul Fiqh is in

five parts. The first is the discussion of the postulates, the second tarjih, the third ijthad, the four shari'a laws, and the five steps of drawing legal conclusions from what the text of the postulates shows [21], [22].

From some of these explanations, it can be concluded that the difference in the division of the rules of Ushul Fiqh is not significant. Because the essence is the same, namely the rules of Ushul Fiqh which are the main discussion. It's just that the division proposed by Shaykh Abdul Wahhab Khallaf is easier and more concise. That is, the rules of Ushul Fiqh are related to language and the rules of Ushul Fiqh are related to the wisdom and purpose of shari'a law [23].

Kaidah Ushul Fiqh Related to Language

What is meant is a rule deduced from an in-depth study of Arabic vocabulary and expressions. It was then combined with what was established by the Arabic linguists so that rules could be used to deduce the law from the texts of the Shari'ah postulates. It is also useful to clarify what is still vague from the postulated texts. Or to find a middle ground when two postulated texts seem to contradict each other. And other benefits related to the legal inference of a proposition [24], [25].

An example of this type of Ushul Fiqh rule is the rule that says that general propositions must be believed even though there is no known proposition that excludes them. This rule is not agreed upon by all scholars. Some scholars argue that the general proposition is not obligatory to believe until another postulate is found that excludes its scope. Scholars who hold this opinion are divided into two groups. Some argue that the search for excluded propositions must reach a certain level [26].

There are examples of practices in the time of the Prophet that reinforce the first opinion. For example, the story of a man in the time of the Prophet who heard verse 98 of Surat al-Anbiya', affirms that a polytheist and whatever he worships will be put into hell. Earlier the man worshipped angels and prophets. When he converted to Islam and heard the verse he felt unacceptable because it meant that some prophets and angels were put in hell. Until he went to the Prophet and expressed his anxiety. The Prophet did not blame the way he understood the text of the verse which showed its general meaning. Then Allah sent down another verse explaining that the prophets and angels would be kept out of hell even though they had been worshipped by the idolaters. This is among the evidence that substantiates the rule that public lafazh must be believed, although it is not yet known whether there is any evidence that excludes some of its scope [27].

Rules of Ushul Fiqh Relating to the Wisdom and Purpose of Sharia Law

The difference between this type of Ushul Fiqh rule and the previous one lies in its source. If previously sourced from Arabic vocabulary and expressions, then the rules of Ushul Fiqh are derived from illat-illat or wisdom from a shari'a law. An example of this type of Ushul Fiqh rule is that the general purpose of all Islamic teachings is to realize human benefit. The benefits in question include three things of different levels, namely emergency benefits. Then the maslahat is a necessity (semi-emergency). Then additional benefits. So that additional benefits do not need to be considered if working on them causes problems that are necessary to be neglected. Likewise, problems that are material or need do not need to be considered if working on them causes emergency problems to be neglected. So that of these three types of problems, the most prioritized is an emergency problem. This type of maslahat is a maslahat related to five things, namely belief (creed), life, reason, honour and property [28].

Islamic Economics

Islamic economics is an economic science based on Islamic values or teachings. He is a system that concerns the regulation of economic activity in society or the state. Islamic economics is a solutive economic system that can answer the failures found in conventional

economic systems, both capitalist and socialist. That is by offering solutions that can provide maximum welfare to the people.

There are several economic institutions imitated by the West from the Islamic world such as shirkah (trade unions), hiwala (letters of credit), and ma'una (a kind of private bank). Even Adam Smith argued that the Arab economy at that time was a developed country economy. As mentioned in his book *The Wealth of Nations*. The Arab nation in question is led by "Mahomet and his immediate successors" or rather the Prophet Muhammad and Khulafaur Rashidin [29], [30].

This Islamic economic system is included in the classical books of Islam. Especially in the section that discusses muamalah, such as Fiqh Jual Beli, Waqf, Payables and others. Therefore, according to Adiwarmanto, Islamic economists do not need to be amazed by Western economic theory. Islamic economists need to have access to the Islamic classics. Scholars need to study modern economic theories to translate modern economic conditions into the language of Islamic classics [31], [32].

Arguments of Fatwa DSN MUI on Gold Credit

One form of buying and selling that is prohibited based on the hadith is exchanging gold for gold or silver for silver intangibly. In Saheeh Muslim, there is a hadith narrated by Abu Sa'id Al-Khudri: "Do not sell any gold or silver; Some are in place and some are not there, except in cash!" In this hadith, there is an explanation that when gold is exchanged for gold it must be cash. Imam Nawawi said: "Ulama agreed to forbid the buying and selling of gold for gold or silver indirectly" [33], [34]

DSN MUI in its fatwa includes several propositions taken from the Qur'an, Hadith, Rules of Ushul Fiqh and Rules of Fiqh. The verses postulated include Surah al-Baqarah verse 275: "Allah justifies buying and selling and forbids usury". The postulates of the hadith include the narration of Ibn Majah: "Indeed, legitimate buying and selling is consensual". While the postulate of the rule of Ushul Fiqh is a rule that reads 'the law depends on the 'illah, if the 'illah exists then the law exists and if the 'illah does not exist then the law does not exist'. Then the postulate of the rules of Fiqh is the rule that reads 'custom is the determinant of law.

In this paper, the author analyzes one by one these postulates using the rules of Ushul Fiqh, especially those related to the method of making legal conclusions from the postulated text. In analyzing these postulates, the author explains 'wajhu ad-dalalah', which is the steps to conclude the text of the postulates mentioned. The rules of Ushul Fiqh are the most important part of the science of Ushul Fiqh. Because the purpose of someone studying the science of Ushul Fiqh is to be able to draw legal conclusions from a proposition. And it can be done by knowing the rules that have come to be known as the rules of Ushul Fiqh. Therefore some scholars define the science of Ushul Fiqh with the expression 'the science of rules by which the law of shari'a is deduced from detailed postulates' [35].

Analysis of the Qur'anic Propositions

As written in the text of the fatwa DSN MUI number 77 of 2010, the proposition from the Qur'an that is used as one of the bases for the permissibility of gold credit is the 285th verse of Surat al-Baqarah. In this verse, there is a very clear description of the permissibility of buying and selling in general. According to Imam Qurthubi, the word "buying and selling" in this verse is a general lafazh. So it is incomprehensible that all buying and selling is allowed. Imam Qurthubi said that the content of this verse is distorted or excluded by other propositions that explain some prohibited buying and selling transactions, such as buying and selling containing usury, or buying and selling alcohol, carrion, and others.

So using verses whose meaning is still general like this as a postulate, according to the rules of Ushul Fiqh cannot be fully accepted. This is due to the large possibility of other

propositions that apply or exclude it. Because that is the hallmark of the general postulate, that is, there are many possibilities for exclusion from other postulates. Postulating using general postulates like this is justified. Even if scholars of Uhl Fiqh disagree whether the general proposition can be immediately believed without having to look for other propositions that exclude? In this matter, Ibn Qudamah chose the opinion that the general proposition could be believed directly although he had not looked for other postulates that excluded it.

So general arguments like this are not so strong as a basis for legal conclusions, which in this case is the permissibility of gold credit. Unless DSN MUI can prove that there is no strong evidence that excludes certain types of buying and selling. And some hadiths forbid the exchange of gold indirectly. It's just that scholars differ in understanding these hadiths, especially about the 'illah of the law [36].

Analyzes Dalil Hadis

The hadith narrated by Ibn Majah which reads, "Indeed, legitimate buying and selling on a consensual basis", does not indicate the permissibility of gold credit with a strict designation. Because the word "buying and selling" in this hadith is a word whose meaning is still general, which is still likely to be excluded by other postulates. So it is still likely that several types of buying and selling are legally prohibited even though sellers and buyers do it consensually. Therefore, scholars say that the legal conditions of buying and selling are not only the existence of willingness between sellers and buyers. There are still other conditions such as the item must be fully owned by the seller. Likewise, the item can be handed over to the buyer. And other conditions are mentioned at length in the books of Fiqh [37].

Arguing with this hadith to allow gold credit, it can be said that gold credit is a new thing in financial transactions, which never existed in the time of the Prophet, and at the same time there is no explicit proposition prohibiting gold credit. So it can be concluded that gold credit is legally permissible if the seller and buyer are consensual with each other to make the transaction.

However, those who forbid gold credit can say that there is a reason that forbids gold credit, namely hadiths that require cash when exchanging gold for gold. And paper money has functions and uses like gold. So exchanging paper money for gold is like exchanging gold for gold. What is required is cash. This according to the rules of Uhl Fiqh can be said to exclude a law by using the proposition of qiyas, which according to Imam Shafi'i can be justified [38].

This shows that the hadith narrated by Ibn Majah above is not so strong as to support the legal conclusion of the permissibility of gold credit. Because those who forbid can still provide rebuttals and answers to the arguments presented. That is by establishing the 'illah of the law, then using the postulates of qiyas. That is to give paper money to gold based on the same 'illah.

Another hadith included by DSN MUI in its fatwa is the hadith narrated by Tirmidhi which reads, "Muslims are following mutually agreed terms; except conditions that forbid something halal or justify something haram". This hadith is not much different from the previous hadith in terms of the absence of unequivocal sentences indicating the permissibility of gold credit. However, it may be said that since there is no explicit proposition prohibiting gold credit, based on the hadith above if the seller or buyer makes a condition in the form of credit then the condition may be implemented. And these conditions do not include conditions that justify the haram. It's just that those who forbid gold credit can still maintain their opinion by saying that there are arguments that require exchanging gold for gold in cash. From this, it was concluded that buying gold with paper money on credit should not be [39].

Hadiths on Converting Gold for Gold

In addition to the two hadiths above, DSN MUI in its fatwa also quoted hadiths that contain the obligation to exchange gold for gold in cash. This hadith does not textually support the fatwa on the permissibility of gold credit. Except to say that the 'illah of the obligation to exchange gold for gold in cash is because gold is then a medium of exchange. So if this 'illah is gone from gold, as it is now when gold is no longer a medium of exchange, then buying and selling gold does not have to be cash. So the conclusion can be gold credit. This is the opinion chosen by Shaykh 'Ali Jum'ah, who was also quoted by DSN MUI in his fatwa. Shaykh 'Ali Jum'ah said the reason is that gold today no longer functions as a medium of exchange. However, it turns into goods that can be bought and sold in instalments or cash [40].

So between DSN MUI and dissenting parties, both use these hadiths as evidence that supports their respective opinions. Differences occur in terms of how to understand it. And it can be said that according to the science of Ushul Fiqh entered into takhrijul manath, which is the hard work of scholars in exploring the 'illah or cause of a law that has been established by the Shari'a, while the Shari'ah does not mention the 'illah. So it is not uncommon for scholars to differ in opinion in determining the 'illah or cause of a law. And this difference ends up causing a difference of opinion or fatwa of an issue [41], [42].

The Rules of Ushul Fiqh About 'Illah

In addition to the text, verses or hadiths, DSN MUI also includes several rules of Ushul Fiqh as consideration for fatwas on the permissibility of gold credit. The rule reads 'al-hukmu yaduru ma'a 'illatihi wujudan wa 'adaman'. That the law of an act depends on its 'illah; If there is 'illah then the law exists and if there is no 'illah then the law does not exist.

The discussion of 'illah cannot be separated from the discussion of Qiyas, which is one of the postulates of the Shar'i recognized by the majority of scholars. This is because 'illah is one of the pillars of Qiyas. It can even be said that 'illah is the most important pillar of Qiyas. Qiyas according to the term Ushul Fiqh is to equate the law of a matter that has no postulates with the law of a matter that has postulates because of the similarity of 'illah between the two. While 'illah according to Ibn Qudamah is 'manathul hukmi', which is something that is used as a place on which the law depends [43].

According to this sense, the law exists if 'illah exists, and the law does not exist if 'illah does not exist. For example, scholars say that the 'illah of the forbidden khamr is intoxicating. So when this intoxicating property is present in drinks other than khamr, it means that the drink is haram to drink, with the proposition of Qiyas, which is qiyaskan with khamr. And if any other drink proves not to be intoxicating then the law of drinking the drink is permissible. So the law does not exist if 'illah does not exist. Therefore there are Ushul Fiqh experts who say that 'illah is something that attracts a law [44].

The Majority of Scholars About the Existence of 'Illah Hukum

The majority of scholars think that the laws of the Shari'ah must contain 'illah. That is according to what is the reason for the emergence of the law of mandatory cash when exchanging gold for gold. Sometimes we know the 'illah and sometimes we don't. And the law relates to the prohibition of buying and selling gold in stages, including the shari'a law which has 'illah or the cause of prohibition of such acts. Ibn 'Assyria says that scholars who believe in the existence of 'illah in every shari'ah law divide the law into three; First, the law is known easily, because it is explicitly mentioned in a postulate. The two laws that are not known at all 'are illah. The three laws are vague, so scholars try to explore the 'illah that is in the law. And of course, there will be many opinions on issues like this. One example is the law relating to the buying and selling of gold for gold [45].

Fiqh Expert Opinion on 'Illah the Law of Buying and Selling Gold with Gold

Fiqh scholars differ on 'illah which is why it is forbidden to exchange gold for gold cashlessly. Some view the 'illah because gold is a medium of exchange. And this is the opinion of Imam Malik and Imam Shafi'i. Whereas according to Imam Abu Haneefa 'illah is because gold is an object that is weighed [46].

Each of these opinions has consequences. Based on the opinion of Imam Malik and Shafi'i; All objects that are a medium of exchange in the transaction of buying and selling are legally the same as gold. So if gold is exchanged for paper money, for example, it must be in cash and not in instalments. As for the opinion of Imam Abu Haneefah, exchanging gold for paper money does not matter if it is done in instalments. According to Imam Abu Haneefa 'illah is weighed. So that all goods weighed if exchanged for gold must be cash. The exchange of gold for paper money does not require cash, based on the opinion of Imam Abu Haneefah. Because gold is something that is weighed while paper money is not weighed. So if the two are exchanged, it is not mandatory cash. Because paper money and gold are different.

Problems Other Than Buying and Selling Gold Closely Related to 'Illah

Many other Fiqh issues prove that the law changed because of the loss of 'illah. For example, the problem of khamr turning into vinegar. In Saheeh Muslim, when the Prophet was asked about khamr being processed into vinegar, he replied: "No." The point of this hadith is that it is not permissible to deliberately process khamr into vinegar. As for if the change to vinegar is natural; Scholars agree that vinegar is halal and holy. This is one of the proofs that the law can be lost because of the loss of 'illah [47], [48].

Still from Saheeh Muslim, on the legal issue of storing sacrificial meat for more than three days. In the past, the Prophet forbade this. And it turns out that the Prophet's intention to forbid it was because of the famine that befell the Muslims at that time. Therefore the next time the Prophet was asked the same problem, he replied: "I used to forbid you because of the poor who came from the interior, now eat some of it, and some keep it, and give alms!".

Imam Nawawi explained that some scholars consider this to include nasakh mansukh between one hadith and another. That is, the hadith that forbids storing sacrificial meat for more than three days is mansukh by other hadiths that allow it. However, according to some scholars, this problem is included in the problem of changing the law because of the change of 'illah. It is said that the prohibition against storing sacrificial meat for more than three days was due to the large number of poor people who came to Medina asking for help. So when the 'illah did not exist, in the sense that there were not many poor people who needed help at that time, then the law of haram disappeared and turned into permissible. That is, it is permissible to store sacrificial meat for more than three days [4].

The same is true of the law of giving zakat to new converts to Islam. Umar while serving as caliph decreed that these people were no longer entitled to zakat. Umar understood that the 'illah law gave zakat to them because the Muslims at that time were still weak in strength. So when this 'illah ceased to exist in age, the law changed. Where in the past it was mandatory to give them a share of zakat, now when Muslims are strong it is not permissible to give them a share of zakat.

So it can be said that from several arguments mentioned by DSN MUI to support the fatwa on the permissibility of gold credit; This rule of Ushul Fiqh includes strong arguments as the basis for fatwas. It is the rule that states that the presence and absence of Sharia law depend on the presence and absence of 'illah of law [10].

Rules on the Effect of 'Urf (Tradition) on Changes in Law

Including the argument of DSN MUI in the fatwa on the permissibility of gold credit is the rule of Fiqh which reads "Al-'Aadah Muhakkamah", meaning 'tradition becomes the determinant of law'. This rule on the one hand is the rule of Fiqh but at the same time, it can be incorporated into the rules of Ushul Fiqh. This is because according to some scholars 'al-'adah' (tradition) is one of the postulates in determining shari'i law. Ad-Dausari, 1428 AH or at least many practices of verses and hadiths depend on 'urf (tradition). For example, verses or hadiths that mention the obligation of the husband to provide for his wife. In the Qur'an and Hadith, there is no mention of the amount of income required. In the end, scholars say that the amount of income is returned to 'urf (tradition) [49].

The Prophet Muhammad also established a law based on prevailing tradition. For example, in the issue of buying and selling greetings. That is, a buyer orders an item from the seller, whereas when there is a contract of goods there is no form. Buying and selling like this was a tradition of the people of Medina at that time. And they use the transaction of buying and selling greetings to buy fruits. If viewed in Fiqh, then originally buying and selling like this included buying and selling which was prohibited because there was an element of 'gharar' or betting and obscurity that tended to be detrimental. But at that time the Prophet did not forbid it. It's just that the Prophet gave provisions to reduce the element of obscurity or betting that tends to be detrimental. At that time the Prophet commanded to determine a clear time, and also a clear dose, in the transaction of buying and selling the greeting system. This later became one of the postulates of the rule of 'al-'adah muhakkamah' [50].

Of course, not all traditions can be one of the postulates in establishing shari'i law. The tradition in question is only one that does not contradict the 'nash' or postulated text. As for if the tradition contradicts the text of the postulate, it is not accepted.

Details About Traditions Contrary to Dalil Text

Dr. Muhammad Shidqi Alburnu explained; that some traditional circumstances contradict the text of the dalil. And in every situation, there are details related to the practice of tradition:

First, tradition contradicts the postulated text as a whole. Under these circumstances, tradition must be abandoned. For example, the postulated text states that drinking khamer is haram. Then some people have a tradition of drinking it. Under these circumstances, tradition must be abandoned.

Second, tradition contradicts the text of the postulate on some fronts. For example, the text of the proposition states that it is unlawful to sell goods that are not yet owned. However, the Prophet Muhammad when in Medina allowed the sale and purchase of greetings, and gave a stipulation, namely that the time and nature of the goods must be clear. Buying and selling greetings includes selling something that is not yet owned. This is an example of a tradition that contradicts the text of the postulate from some sides only. In terms of buying and selling greetings is opposition from the side of the element of selling something that is not yet owned. It's just that the other side corresponds to the text of the postulate, such as clarity in the goods ordered and the timing.

Third, tradition contradicts the text of the postulates, while the text of the postulates also builds on traditions that were widespread in the age of Revelation. Shaykh Muhammad Shidqi Alburnu gave an example of a postulated text from a hadith that discusses 'usury treasures'. That is, there are several items when exchanged for similar ones, must be cash and with the same weight. If two similar goods are exchanged for no cash or not equal weight, it is considered usury. Gold and silver are examples of such usury treasures. According to one opinion; Gold and silver are usury treasures because

they are 'weighed'. So all weighed goods are punished like gold and silver when they are bought and sold. So when in an age traditions changed, so that gold was sold 'units', not by 'weighed'; The law has changed due to changes in tradition. Shaykh Muhammad Shidqi Alburnu said that according to some scholars in such a state it is permissible to practice something that is a tradition. The majority of scholars argue that it is still mandatory to practice the text of the postulate.

Fourth, the tradition is contrary to the opinion that is the result of the ijthihad of scholars. In this situation practiced is a tradition.

By examining the text of DSN MUI's fatwa, it can be understood that DSN MUI's purpose in quoting this rule in its fatwa is not to contradict it with hadiths that require selling gold for gold in cash. However, to exclude the scope of these hadiths. Which in Ushul Fiqh is termed 'takhshihul 'aam'. That is, it excludes the scope of postulates of a general nature. Where the hadiths state the obligation of cash when exchanging gold for gold. This applies generally to all types of gold. Then as the golden age passed, which was once a medium of exchange, it turned out to be a function of goods. This change in function is based on the prevailing tradition. Based on what Ibn Qudamah explains in the book Raudhatun Talibin; Among those who can takhshish or exclude general postulates is 'al-hiss' or something that can be known with the five senses.

Banknote

The discussion of the law of gold credit cannot be separated from the discussion of history that explains the development of money from gold to paper money as it is today. Then from there, we can understand the position of gold at the time of the appearance of paper money. History proves that the first civilization saw humans meet their needs on their own without the help of others. This is because their needs are still small. So in the first civilization, there was no buying and selling activity. And automatically no money serves as a medium of exchange [\[51\]](#).

Then over time, the number of humans increased, to urge them to buy and sell to meet the needs of life. At first, they did it with a barter system. Then they look for objects that are often used and needed, such as salt, grains, and the like. Then they use these objects as a gauge of the price of merchandise. But it turned out to be difficult. Because it is not easy to carry everywhere in large quantities. Eventually, they used gold and silver as substitutes. That's when both became a medium of exchange in buying and selling transactions. And in the end, countries that use both as currencies are desperate to reduce gold or silver money. And desperately issued banknotes [\[52\]](#), [\[53\]](#).

So since the existence of paper money officially issued by state banks, the position and function of gold have been replaced with these banknotes. So paper money has a function like gold, namely as a measure of the value of an item as well as a medium of exchange.

CONCLUSION

After studying the postulates stated by DSN MUI in its fatwa about the permissibility of gold credits: the author concludes that these propositions when weighed with the rules of Ushul Fiqh are strong and deserve to be used as a legal basis. The arguments of DSN MUI that are considered the strongest are those taken from the rules of Ushul Fiqh and the rules of Fiqh. Based on this rule and coupled with the opinion of the majority of scholars, it is understood that the obligation to exchange gold for gold in cash is because gold becomes a medium of exchange in buying and selling transactions. Whereas according to some scholars 'illah, a law can be takhsish or excluded. So the law may change because of the loss of an 'illah. History proves that gold is no longer a medium of exchange in buying and selling transactions. So the law of compulsory

exchange of gold for gold in cash is no longer valid. And of course, exchanging gold for paper money in instalments can be justified. Not following the fatwa to avoid differences in scholars is recommended. Especially for those who don't need gold as an investment. Those who are interested in making gold as an investment can take the fatwa of DSN MUI in this matter, which has known the strength of its arguments and its compatibility with the rules of Ushul Fiqh.

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Author Contribution

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Conflicts of Interest

All authors declare no conflict of interest.

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