

Contextual Fiqh Paradigm in Determining the DSN-MUI Fatwa on Non-Cash Gold Purchase and Sale (Abdullah Saeed's Ethico-Legal Value Hierarchy Approach)

Achmad Nursobah¹, Abu Hapsin², Mahsun³, Muhajir⁴

Institut Agama Islam An-Nawawi Purworejo, Jawa Tengah, Indonesia^{1,4}, Universitas Islam Negeri Walisongo Semarang^{2,3}

23090290004@student.walisongo.ac.id¹, abu_hapsin@walisongo.ac.id²,
mahsun@walisongo.ac.id³, muhajirmadruslam@gmail.com⁴

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Abstract

This article examines the use of a hermeneutical approach in the process of istinbat (legal reasoning) by the National Sharia Council–Indonesian Ulema Council (DSN-MUI), with specific reference to Fatwa No. 77/DSN-MUI/V/2010 concerning non-cash gold trading. The fatwa has generated scholarly debate, as it permits transactions seemingly contrary to hadiths mandating immediate exchange for ribawi commodities. The study adopts Abdullah Saeed's contextual hermeneutics, emphasizing implementational values and socio-historical context in interpreting Islamic legal texts. By integrating ethico-legal principles and the objectives of Islamic law (maqasid al-sharia), DSN-MUI engages in a structured hierarchy of values and applies usul al-fiqh methodologies to address contemporary economic challenges. While some critics argue that the fatwa diverges from a strict textualist reading of hadith, the DSN-MUI's contextual approach demonstrates normative adaptability without compromising sharia principles. This approach responds to emerging financial realities, such as digital transactions, while upholding the public interest (maslahah). The study highlights the significance of hermeneutical methods in balancing the authority of religious texts with the evolving needs of society, and affirms the DSN-MUI's strategic role in shaping progressive and globally responsive Islamic economic jurisprudence.

I. Introduction

The debate on the use of hermeneutics in the derivation of Islamic law (istinbat al-ahkam) continues among Muslim scholars and academics (Khasanah et al., 2020). Some scholars are concerned that hermeneutics, originating from a Western tradition, is not entirely compatible with the principles of textual interpretation in Islam and may open the door to interpreter subjectivity and distort the understanding of religious texts (Syamsuddin, 2021). However, a number of Muslim scholars and scholars have attempted to integrate hermeneutics with the principles of Islamic interpretation, and some scholars view hermeneutics as an epistemology that can enrich the process of discovering Islamic law by understanding the historical and socio-cultural context (Alak, 2023). This debate demonstrates that the use of hermeneutics in Islamic law remains a controversial topic requiring further dialogue and scholarly investigation.

The dynamic nature of challenges within the Islamic economy demands a sound legal framework, recognized both nationally and internationally. Legal issues in Islamic finance require solutions that are relevant and accurate in addressing societal needs (Yuniartik, 2023). In this context, fatwa-issuing institutions play a crucial role in providing legal guidance, particularly in Indonesia. Institutions such as the DSN-MUI (National Sharia Board of the Indonesian Ulema Council), Lajnah Bahts al-Masā'il (Committee for Research on Issues), and Majelis Tarjih (Council of Preference) wield significant influence due to widespread public support (Khotimah & Author, 2024). Each institution possesses unique characteristics that distinguish its approach to legal issues (Subli et al., 2024). The DSN-MUI, for example, has a significant connection to the Islamic economy, making it a strategically important institution for providing Sharia-compliant legal solutions (Tahmid et al., 2019). Given these roles, the existence of these fatwa-issuing institutions is relevant in providing certainty that the resulting legal solutions are not only nationally relevant but also competitive internationally.

The DSN-MUI has a responsibility to produce fatwas relevant to the development of the Islamic economy. Rapid societal changes, such as the emergence of financial technology (fintech) and digital transactions, demand that the DSN-MUI adapt to the needs of modern society (Fakhruddin et al., 2024). For example, the DSN-MUI has issued fatwas concerning the use of e-money and Sharia-compliant pay-later services to address the challenges of the digital age. In formulating these fatwas, the DSN-MUI maintains fundamental Sharia principles, such as avoiding riba (usury), gharar (uncertainty), and

maysir (gambling), while providing practical solutions that meet societal needs. This adaptive approach ensures that DSN-MUI fatwas remain relevant to technological advancements while upholding Islamic values (Prasetyo & Fatimah, 2022).

Generally, the results of *istinbath* (derivation) in fatwas issued by the DSN-MUI are known to be evolving and moderate (*tawassuth*), meaning they are not overly strict compared to textual interpretations (*tasyaddud*), yet remain consistent with the understanding of the *al-nass* (text) and are only considered with regard to public benefit (*tasahhul*) (Akil et al., 2024). In issuing its fatwas, the DSN-MUI (National Sharia Board of the Indonesian Ulema Council) relies on the concept of *maslahah*, generally understood as public interest or benefit. Specifically, they prioritize *maslahah qat'iyah*, which refers to certain and established benefits that are entirely compatible with Sharia principles. However, if a purported benefit (*maslahah*) is later found to violate core Sharia principles, the fatwa must be revisited and potentially revised. This is because such a *maslahah* falls into a category lacking certainty and therefore cannot serve as a valid justification for actions contrary to established Islamic law. The DSN-MUI's approach thus balances the pursuit of public good with the unwavering adherence to fundamental Islamic tenets (Mujahidin, 2022). However, after being observed by the researcher, it turns out that if a hermeneutic approach is carried out, the hermeneutic elements in the legal *istinbath* process carried out by DSN-MUI are actually fulfilled. In this case, the researcher focuses on the contextual hermeneutic approach to Abdullah Saeed's ethico-legal value hierarchy thinking. Where Abdullah Saeed in an effort to carry out contextuality towards the text uses a hierarchy of five values, namely: obligatory values, fundamental values, protective values, implementation values, and instructional values (Barsihannor et al., 2023). According to Abdullah Saeed's reading, of the five values, the one that is currently most likely to be able to be approached contextually is the Implementational Values (Shomad, 2022).

An interesting fatwa from DSN-MUI is Fatwa No. 77/DSN-MUI/V/2010 which discusses non-cash gold trading. In this fatwa, DSN-MUI is of the opinion that non-cash gold trading transactions are permitted. However, there is a discrepancy between the contents of the fatwa and several prophetic hadiths that DSN-MUI also conveyed in the context of non-cash gold trading. Therefore, researchers will explore the hadiths on gold trading transactions:

[illegible]

Meaning: Buying and selling gold for gold, silver for silver, wheat for

wheat, dates for dates, and salt for salt (are required to be) the same and of the same type and done in cash. If they are of different types, then sell them as you wish when done **in cash.**"

... الذَّهَبُ بِالْأُوقِيَّاتِ رِبَا إِلَى هَا عَ وَهََا عَ

"(exchanging/buying and selling) gold for silver is usury except in cash."

[illegible]

“Do not sell gold for gold unless they are equal (in value) and do not add some to each other; do not sell silver for silver unless they are equal (in value) and do not add some to each other; and do not sell gold and silver that is not cash for cash.”

سَوَّلَ لَنَا لَاحِلَ صَلَّيْ لَاحِلَ عَ لَاحِلَ وَ صَلَّيْ مَ عَنْ بَابِ الْوَرَقِ بِالْهَبِ نَبَا

"The Messenger of Allah forbade selling silver for gold on account."

It's crucial to highlight that, based on the four hadiths discussed, a literal interpretation suggests that gold transactions should ideally be conducted in cash. Traditional scholars unanimously agree that non-cash methods are impermissible due to the potential for **riba** (usury). Interestingly, the DSN-MUI (National Sharia Board of the Indonesian Ulema Council), composed of Islamic scholars and jurists, should possess a deep understanding of these hadiths prohibiting non-cash gold transactions. However, a discrepancy exists between the DSN-MUI's fatwa and the textual and fiqh approaches, which seems inconsistent with the teachings of the Prophet Muhammad (peace be upon him). It should be noted that the DSN-MUI does not formulate its fatwas on the permissibility of non-cash gold transactions arbitrarily. Their draft fatwas include a hierarchy of **istinbath** (legal derivation) that references the Quran and opinions of various scholars. This demonstrates an attempt to contextualize the understanding of the hadith texts to address contemporary economic issues, particularly non-cash gold transactions, to make them relevant.

Based on the above background, the research questions are as follows:

1. How is the contextual fiqh approach applied in the DSN-MUI's *istinbath* process regarding the fatwa on non-cash gold transactions?
2. How is Abdullah Saeed's ethico-legal hierarchy of values applied in analyzing the DSN-MUI's fatwa on non-cash gold transactions?

Prior research on similar topics has been conducted. Firstly, Sifdiatul Kirom's thesis at the State Islamic University of Prof. K.H. Saifuddin Zuhri Purwokerto examined the implementation of DSN-MUI fatwas related to debt-based financing transactions. The study focused on the relationship between the Quranic text and Islamic financial regulations, including fatwas issued by

the DSN-MUI. Employing a qualitative method with a historical-critical and legal hermeneutical approach, the research showed that interpreting Q.S. Al-Baqarah verse 282 in the context of modern financial transactions requires reinterpreting the values of justice and transaction documentation to maintain public trust. The study recommended that the DSN-MUI broaden its contextual approach to address the complexities of modern digital finance and not solely rely on textual interpretations. (Kirom, 2023).

Secondly, Sumarno and M. Muhajir's research in the *Nusantara: Journal of Social Sciences* examined the DSN-MUI's fatwa on non-cash gold transactions, focusing on its sociological and contextual aspects. Using a qualitative approach with content analysis of the fatwa document and supporting literature, the study showed that the fatwa considered the context of changing transaction technologies and the dynamics of urban Muslim consumer needs, without neglecting strict Sharia principles regarding *riba* and *gharar*. A key finding was that the DSN-MUI's fatwa is not merely a normative product but also reflects the adaptation of Islamic legal values to the increasingly complex challenges of the digital economy. The research recommended that, in future fatwa formulations, the DSN-MUI should be more transparent in explicitly documenting the contextual value considerations to strengthen academic legitimacy and encourage public participation (Sumarno et al., 2024).

The novelty of this research lies in its in-depth exploration of the application of Abdullah Saeed's contextual hermeneutical approach, specifically his ethico-legal hierarchy of values, within the DSN-MUI's (National Sharia Board of the Indonesian Ulema Council) **istinbath** (legal derivation) process for issuing fatwas. Previous research has largely focused on justifying **maslaha** (public benefit) or the principles of **maqasid al-shariah** (higher objectives of Islamic law) in a general sense, without systematically connecting them to a structured and epistemological hermeneutical approach. This study offers a new approach to interpreting Fatwa No. 77/DSN-MUI/V/2010 on non-cash gold transactions by examining the fatwa's internal structure through the lens of Saeed's five value categories: obligatory, fundamental, protective, implementational, and instructional. The research highlights that although hadiths explicitly prohibit non-cash gold transactions, the DSN-MUI, using the implementational value approach, successfully accommodates evolving socio-economic realities without compromising Sharia principles.

This study introduces a new dimension to contemporary **istinbath** discourse, demonstrating that the integration of modern hermeneutics with classical fiqh traditions enables the creation of more adaptive fatwas that are

responsive to the needs of a global society. The research also demonstrates that the DSN-MUI has employed hermeneutical elements such as attention to social context, the value of benefit, and legal validity, even without explicitly labeling it as "hermeneutics." Therefore, this research bridges Western epistemology (hermeneutics) and the Islamic legal system, addressing concerns among some scholars about potential misinterpretations resulting from non-literal approaches. Methodologically, this research enriches the field of contemporary Islamic legal studies by proposing a new framework for value-based **istinbath**, offering a constructive alternative to rigid textual interpretations.

2. Research Method

This research employs a qualitative methodology with the primary objective of deeply exploring the DSN-MUI's (National Sharia Board of the Indonesian Ulema Council) fatwa issuance process, specifically focusing on Fatwa No. 77/DSN-MUI/V/2010 concerning non-cash gold transactions, through the lens of contextual hermeneutics. The approach utilizes library research, examining official fatwa documents, hadith texts, literature on Islamic legal thought, and Abdullah Saeed's hermeneutical theory. The focus is on tracing the epistemic structure and normative foundations employed by the DSN-MUI in its **istinbath al-hukm** (legal derivation) process. This research is not hypothesis-driven but rather aims for a deep understanding and interpretation of the text and context. This approach allows the researcher to explore the interrelationship between religious texts, socio-economic realities, and legal reasoning.

Data collection involves documenting the DSN-MUI fatwa, relevant tafsir and hadith texts, and academic works on hermeneutics and contemporary Islamic law. The primary data consists of the official fatwa text, particularly Fatwa No. 77/DSN-MUI/V/2010, and hadiths related to gold transactions. Secondary data is gathered from scholarly journal articles, books on modern Islamic legal thought, and Abdullah Saeed's theoretical work on the ethico-legal hierarchy of values. Data analysis utilizes content analysis and hermeneutic analysis to understand the connections between text, context, and interpretive principles. Through this, the researcher reinterprets the DSN-MUI's **istinbath** structure using the implementational value approach within the framework of **maqasid al-shariah** (higher objectives of Islamic law) and the dynamics of the digital economy.

3. Results and Discussion

The View of the National Sharia Council (DSN) MUI on Non-Cash Gold Buying and Selling

The Prophet's hadith explaining the exchange of gold for gold, silver for

silver, and gold for silver, or vice versa, provides confirmation that such transactions must involve the use of money (Ichsan, 2017). The consensus of scholars states that if the exchange is carried out non-cash, the transaction falls into the category of usury. Therefore, according to the views of scholars, gold and silver are referred to as usury goods (Adegokenaheem, 2024).

Some scholars explain that the regulations or laws related to transactions, as explained in point 1 in the fatwa, can be categorized as laws containing 'illat and 'illat from this explanation is related to gold and silver as a commodity tool. In this context, the gold and silver mentioned in the hadith text, when viewed from the perspective of asbābul wurūd, are considered as šaman, namely price, means of payment, or means of exchange, money (Selly, 2024). The definition of money called šaman or nuqūd in Fiqh literature, according to scholars is "Naqd (money) refers to something that is considered a means for exchange transactions and can be considered broadly valuable, without considering the conditions of the means" (Al-Manba, 1996). Referring to the opinion of Muhammad Rawas Qal'ah, "Naqd is an object that is considered valuable (šaman) by society, whether in the form of metal, paper, or other materials that can be considered valuable, and issued through a financial institution that has the authority" (*Qal'ah Ji*, 1999).

Based on the provided definition of money, it's understood that gold, silver, or other commodities, including paper, are not considered money unless accepted by society as a medium of exchange. According to Muhammad Rawas Qal'ah Ji, they must also be authorized and issued by the governing authority (the government). Simply put, an object's status as money depends on societal custom.

In the current global context, society does not consider gold and silver as money but rather as valuable commodities. Ibn Taymiyyah and Ibn al-Qayyim similarly stated that gold or silver acquire the status of commodities when no longer used as currency, but only as ornaments. Considering this explanation and referring to the principles of *Usul al-Fiqh* (principles of Islamic jurisprudence) and fiqh, the conditions for exchanging gold and silver mentioned in the Prophet's Hadith are deemed irrelevant for the exchange of gold as money in the present era. Therefore, in this Fatwa, the DSN-MUI concludes that exchanging gold as money is permissible (*mubah*) when gold is not considered a medium of exchange (money).

Application of Abdullah Saeed's Ethico-Legal Value Hierarchy in the Analysis of the DSN-MUI Fatwa on Non-Cash Gold Purchase and Sale

Contextual Hermeneutics of Ethico-Legal Value Hierarchy Abdullah Saeed

In this discussion, the researcher uses Abdullah Saeed's contextual theory with the Hierarchy of Values method in Implementation values. Saeed stated that context is considered an important factor in interpreting the text of the Qur'an. Internally, context is the basis for understanding the relationship between the commands of the ethico-legal verses of the Qur'an and the reasons behind the implementation of these commands to the Hijaz community in the 7th century (Nuraini et al., 2024).

1. Socio-Historical Context

Understanding the socio-historical context before and during the Islamic era plays a central role in interpreting the Qur'an. In addition to providing insight into how the early generations of Muslims understood certain texts, this knowledge also reflects various aspects of life, thought, institutions, and practices during the time of revelation that are substantially different from today (Rosyada, 2018). Awareness of this aspect can help interpreters identify ethico-legal verses that only apply at that time and are still relevant today, as well as those that are no longer or less relevant in the current context. (Lestari, 2017).

2. Formulation of Value Hierarchy in Ethico-Legal Texts (Jayana, 2019)

a. Mandatory Values

Within the framework of Islamic teachings, there are levels of fundamental values that must be adhered to by every Muslim individual, without exception. These values are universal and are not tied to a specific cultural context, either the culture of Mecca or Medina at the time the verses of the Qur'an were revealed. Muslims consensually recognize the importance of these obligatory values as essential components of their religion (Saidullaevich, 2022).

These obligatory values can be classified into three subcategories: first, values related to belief systems, such as faith in Allah, the Prophets, holy books, the day of judgment, accountability, and life after death, which are generally known as the pillars of faith; second, values related to the ritual practices of worship emphasized in the Koran, such as prayer, fasting, pilgrimage, and remembering Allah, which are categorized as worship and known as the pillars of Islam; third, things that are expressly permitted or prohibited by the Koran, which apply permanently (Albayrak & Coruh, 2023). The terminology "has been made lawful" or "We have made lawful" indicates that what is determined as lawful will always be lawful, and vice versa. Meanwhile, the term "He has forbidden" and the like indicate prohibitions, such as the prohibition of consuming carrion, blood, pork, dealing in usury, and forbidden marriages. In the face of such verses, Muslims have no choice but to obey them literally. However, only a few verses explicitly mention the terms halal and haram, so

this discussion should not be confused with the detailed list of halal and haram in Islamic legal literature (Najib, 2016).

b. Fundamental Values

The second group consists of verses that contain human values, such as justice, humanity, and protection of property rights. Many classical scholars, such as Al-Ghazali, have discussed and emphasized the importance of these values, which in the study of ushul fiqh are referred to as maqasid al-shariah (the main objectives of sharia) (Erdoğan, 2021).

Fundamental values are values that are repeatedly emphasized in the Qur'an and have a strong textual basis. Although there is no specific text stating that these values are fundamental and universal, classical Muslim scholars using the inductive method concluded that the five values above are the main objectives of Islamic law (Al Jufri et al., 2021). Even though classical scholars limit the number of universal values to five, this number can still be developed according to the demands of the times, such as the concept of 'protection of religion' which was expanded to 'religious freedom' (Ibn Asyur) or reform and women's rights in maqasid theory (Rasyid Ridha and Yusuf al-Qaradawi) (Subekti, 2024).

c. Functional Protection Value

In Abdullah Saeed's hermeneutic framework, the function of protection value has an important role in maintaining the continuity of basic values in Islam. This value functions to protect fundamental aspects that are the core of religious teachings, such as the protection of life. For example, the prohibition of killing in Islamic teachings is not just a rule, but is a manifestation of the value of protection that emphasizes the importance of protecting every life. Thus, understanding this protection value becomes very relevant in the context of Islamic ethics and law, where every action must consider its impact on human life (M. Syarif Adi Pramana & Muhammad Saiful Khair, 2024).

Furthermore, the recognition of the value of this function of protection also reflects the awareness that basic values are not only valid in the past but must also continue to be adapted according to the demands of the times. In the modern context, for example, efforts to protect individual rights and prevent violence are becoming increasingly important. This is in line with the principles of maqasid al-shariah which prioritize the protection of human life and dignity (Arrozi & Bakar, 2024). Thus, the value of functional protection not only serves as a moral guideline in daily life but also as a foundation for building a more just and sustainable society, in accordance with the universal teachings of Islam.

d. Implementation Value

Implementation value in Abdullah Saeed's hermeneutics refers to concrete

actions and steps needed to maintain fundamental values and protection in society. This value is reflected in the verses of the Qur'an that regulate the implementation of punishment, such as the prohibition of stealing which must be enforced through sanctions for violators (Ash-Shiddiqy & Diana Fitriyati, 2022). For example, when the Qur'an prescribed the punishment of amputation of hands in the 7th century CE, it did so in the context of the prevailing culture and law, where corporal punishment was common. In that context, the punishment of amputation of hands was considered the most effective measure to combat theft. However, it is important to note that this form of punishment was not the primary goal of the Qur'anic teachings, but rather a means to a greater goal, namely *hifzu al-mal* or the protection of property (Saeed, 2013). Thus, implementational values function not only as instruments of law enforcement but also reflect efforts to maintain fundamental Islamic values' relevance and effectiveness in addressing contemporary challenges.

Similarly, the forms of punishment explicitly detailed in the Quran, such as *qisas* (retribution) for murder, flogging (100 lashes for adultery, 80 for false accusation), and other punishments, are deeply rooted in the socio-cultural context of Arabian society during the time of revelation. (Fauzan, 2024). Therefore, these forms of punishment are considered localized and temporally specific, and the relevant verses are subject to dynamic interpretation. This category encompasses the specific measures or actions used to implement safeguarding values. These measures can change according to the prevailing conditions or context. **(This is the value category focused on in this study).**

e. Instructional Values

Instructional values in the Quran refer to the specific actions and rules established to address particular issues at the time of revelation. These values are embedded in verses containing commands and prohibitions aimed at resolving problems faced by society during the time of the Prophet Muhammad (peace be upon him). However, because these verses are context-specific to the time of revelation, their application is not always universally applicable. (Sudirman, 2017). Abdullah Saeed stated that these instructional values are among the most difficult to understand, considering their large number and diverse forms. These verses use various word choices, such as *amr* (command), *nahy* (prohibition), as well as special parables and stories, which often give rise to ambiguity in their interpretation (Rachmawan, 2013). Therefore, interpreters often have difficulty in relating these instructional messages to the context of modern life today. To overcome this challenge, Saeed formulated an exploratory method to determine whether the values in the instructional verses are universal or limited to the time of the Prophet. The criteria used include the

frequency of the message in the Qur'an, the emphasis of the message during the Prophet's mission, and its relevance to the culture, time, place, and conditions of the early Muslim community (Ilieva, 2023). With this approach, Saeed hopes to bridge the gap between the Qur'anic texts and contemporary realities, so that the instructional values can be applied more relevantly in the daily lives of Muslims today. Through in-depth contextual analysis, Saeed offers a way to understand and apply the teachings of the Qur'an more effectively, ensuring that these values remain alive and relevant amidst changing times.

Contextual Hermeneutic Aspects in the DSN-MUI Fatwa on Non-Cash Gold Purchase and Sale

1. Socio-Historical Context Analysis

DSN-MUI legalized non-cash gold buying and selling transactions by considering the socio-historical context involving hadiths that prohibit non-cash gold buying and selling. In its decision, DSN-MUI not only refers to the views of classical scholars, but also contemporary scholars regarding the socio-historical hadiths. Basically, DSN-MUI includes the opinions of a number of scholars, such as Ali Jum'ah, Ibnu Qoyyum, Abdullah bin Sulaiman al-Mani', Dr. Khalid Mushlih, and 'Abd al-Hamid Syauqiy, which are in line with the understanding that non-cash gold and silver buying and selling is prohibited because the hadiths contain elements of usury, especially at a time when gold and silver were considered to be clear prices (tsaman). So it is clear that the DSN-MUI in determining its fatwa also contains a contextual element through in-depth analysis of the socio-historical context which in the DSN-MUI fatwa regarding non-cash buying and selling of gold is called asbabul wurud (Sumarno *et al.*, 2024).

2. Implementation Value Analysis

After conducting a socio-historical context analysis, the next step to make it easy to understand is to analyze the hierarchy of ethico-legal values that have changed, namely the analysis of implementation values. This value proves that the DSN-MUI is not careless in determining a legal fatwa, they have special considerations in determining the fatwa, in this case the fatwa on non-cash gold buying and selling. In responding to the hadiths mentioned in the introduction, the DSN-MUI in considering its legal fatwa uses the Principles of Usul Fiqh and Fiqh as a form of contextual implementation.

a. Principles of Usul:

إِلَّا ظَنَّمْ يَنْتَظِرُ لَوْرُ مَظَنَّةٍ وَجَوَالَا كَرْمَ الْعَا

"The law will continue to develop (change) in terms of the presence or absence of illat (Al-Nadawiy, 1999)."

Based on principles of **Usul al-Fiqh** (Islamic jurisprudence), the DSN-MUI (National Sharia Board of the Indonesian Ulema Council) permits non-cash gold transactions. While some hadiths (prophetic traditions) appear to prohibit such transactions, focusing on the **'illat** (underlying reason) reveals a different interpretation. The **'illat** in the hadiths is the use of gold and silver as currency (**tsaman**). The prohibition, therefore, applies to their exchange as a primary medium of exchange, not as commodities.

In contemporary transactions, gold and silver are primarily treated as commodities (e.g., investment assets or jewelry), not currency. This shift in function renders the original *'illat* irrelevant. The DSN-MUI's reasoning is supported by the principle of *ahkam mu'allalah* (rulings with underlying reasons): if the *'illat* no longer applies, neither does the ruling. The majority of scholars agree that the rulings concerning gold and silver transactions in the hadiths fall under this category, with the *'illat* being their function as currency (*tsamaniya*).

Considering these points and the principles of *usul al-fiqh* and *fiqh*, the conditions for gold and silver exchange outlined in the Prophet's hadiths are deemed irrelevant in the context of modern monetary systems. Therefore, the DSN-MUI concludes that the prohibition against non-cash gold transactions does not apply in contemporary circumstances where gold is not functioning as currency.

b. Fiqh rules:

الْعَامِلَةُ حَقُّهَا

"Customs (social customs) are used as the basis for determining laws"(Al-Suyuthiy, 2004)."

أَنَّ لَمْ يَخْصَا كَامِ الْمَتْرُوتِ بِهَـ 'عَلَى الْعَوْلِدِ' تَبُورُ 'مَع' هَا 'كَيْفَ' مَا كَا رَتْ 'وَتَبْ ط ل' 'مَع' هَا 'إِذَا' ب' طَلَتْ كَلْفِدِ فِي لَمْ مَوَا 'مَلَتْ

Meaning: Laws originating from tradition or custom apply along with the tradition and become invalid when the tradition is declared void, as in the context of currency in muamalah transactions (*Al-Qarafi, 1999*).

مِنْ النَّحْرِ : فَتَجْعَلُهُ : كَالْحِطِّ عَنِيبٌ عَلَى عَنَابٍ ط ل ع نَكْ زَوَالُ بِلَالٍ عَلَامَةٌ ، فَاِبْلَغْ يُرْتَعَى رِيَالُ حَطِّ م

Meaning: Quoted from the book al-Dzakhirah a principle: Every rule or law that originates from a 'urf (tradition) or community custom becomes invalid when the custom disappears. Therefore, if the custom changes, then the rule/law will also change (*al- Mawwaq*, 2013).

The DSN-MUI also notes that the current practice of gold trading is commonplace, aligning with the earlier assertion that gold and silver are now traded as commodities (jewelry) rather than currency. Therefore, the DSN-MUI

has issued a fatwa supporting non-cash gold transactions. The fatwa defines *tsaman* or *nuqud* (plural of *naqd*)—currency in Islamic jurisprudence—as follows:

Naqd, or money, refers to anything generally accepted as a medium of exchange, regardless of its physical form or condition. Sheikh Muhammad Rawas Qal'ah defines *naqd* as an entity recognized by society as having value (*tsaman*), which can be metal, printed paper, or other materials issued by an authorized financial institution. Based on this definition, anything recognized by society as a medium of exchange—including gold, silver, paper, or other materials—would have the status of money, according to the perspective of Muhammad Rawas Qal'ah Ji and the issuing financial institution. In other words, an object's status as money is determined by societal practice and custom. Currently, global society no longer considers gold or silver as money but as commodities (*sil'ah*), consistent with the views of Ibn Taymiyyah and Ibn al-Qayyim, who stated that if gold or silver no longer functions as a medium of exchange in jewelry, they are considered ordinary goods (Qal'ah Ji, 1999)."

From the discussion of the research above, it is clear that the DSN-MUI has established legal rulings with careful consideration, taking into account the socio-historical context of the hadiths, known as **asbabul wurud**, which are referenced from the opinions of scholars. The implementation of these rulings adheres to both contextual principles and normative fatwa guidelines from both deductive and inductive perspectives.

Therefore, the conclusion of the DSN-MUI fatwa regarding non-cash gold transactions is articulated as follows:

"The DSN-MUI fatwa determines that the law regarding non-cash gold transactions, whether through regular sales or **murabahah** (cost-plus financing), is permissible (**mubah, ja'iz**) as long as gold does not serve as an official medium of exchange (currency)."

This is because it is based on general rules.

إِنَّمَا هِيَ أَمْرٌ مِّنْ أَمْرِ الْبَيِّنَاتِ إِذْ إِنَّ هِيَ دَلٌّ عَلَى الْفُرْقَانِ
لِأَنَّهَا

"Basically, all forms of *mu'amalat* are permissible unless there is an argument that forbids it."

The analysis clearly demonstrates the DSN-MUI's meticulous approach to the case of non-cash gold transactions. Their contextual approach employs principles of **usul al-fiqh**, fiqh rules, and accumulated opinions from both classical and contemporary scholars. This comprehensive and relevant **istinbath** hierarchy concludes that non-cash gold transactions are permissible in the contemporary era.

4. Conclusion

The research shows that the DSN-MUI's fatwa on non-cash gold transactions is based on contextual hermeneutical analysis, considering the socio-historical context and implementational values. In issuing this fatwa, the DSN-MUI referenced hadiths prohibiting non-cash gold transactions due to the potential for *riba* (usury), as well as opinions from classical and contemporary scholars. They acknowledged that in the past, gold and silver served as currency (*tsaman*), but in the modern context, gold is primarily viewed as a commodity or jewelry. Therefore, the *'illat* (underlying reason) for prohibiting non-cash gold transactions is deemed irrelevant.

The DSN-MUI also employed principles of *usul al-fiqh* and *fiqh* to justify this fatwa, emphasizing that legal rulings change with changing circumstances and societal practices. Based on the principle that all *muamalah* (transactions) are permissible unless explicitly prohibited, the DSN-MUI declared that non-cash gold transactions are *mubah* (permissible) as long as gold does not function as official currency. This fatwa demonstrates the DSN-MUI's comprehensive and relevant application of contextual analysis and Islamic legal theory in a contemporary context.

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