

Model of Positivization of Shari'ah Economic Law in Indonesia: A Study of Bank Indonesia Regulations 2008-2023

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Abstract

The objective of this article is to clarify the regulations established by Bank Indonesia (PBI) from 2008 to 2023 in relation to sharia-compliant banking. PBI represents a regulatory framework incorporating or referencing the Fatwa DSN-MUI, as mandated by the Law on Banking Regulations for Islamic Banking, which requires that the Fatwa DSN-MUI serve as a reference point for the principles of Islamic banking. This study aims to address two research questions. The first question concerns the transformation of the DSN-MUI fatwa into a PBI from 2008 to 2023. The second question is an examination of the patterns of transformation. This research is a qualitative study within the field of normative legal research. The primary object of study in this research is the legal materials, namely the PBI and SEBI, which are placed in juxtaposition with the DSN-MUI Fatwa. A content analysis of the regulations was conducted, employing a conceptual approach to identify points of convergence between the PBI and the DSN-MUI fatwa. The findings reveal that the manner in which the DSN-MUI fatwa was transformed into a PBI is evident in both stylistic and substantive aspects. A variety of terms were employed to describe the contracts and the substance of the DSN-MUI fatwas, which were subsequently developed in the PBI. The pattern of transformation of the Fatwa DSN-MUI into the PBI can be identified through the analysis of three distinct patterns: the "copy and paste" pattern, the "adaptation" pattern, and the "expansion" pattern. In order to provide definitions, this approach is employed in both the general provisions and the detailed operational provisions.

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Abstrak

Artikel ini berupaya mengelaborasi Peraturan Bank Indonesia (PBI) dari tahun 2008 hingga 2023 yang berkenaan dengan perbankan syariah. PBI merupakan peraturan yang mengadopsi atau menyerap Fatwa DSN-MUI sebagai tindak lanjut ketentuan Undang-Undang tentang Perbankan Syariah yang mengamankan produk Fatwa DSN-MUI sebagai parameter prinsip-prinsip syariah dalam operasional perbankan syariah. Penelitian ini bertujuan untuk menjawab dua rumusan masalah yakni bagaimana bentuk perubahan Fatwa DSN-MUI ke dalam PBI tahun 2008-2023 dan pola transformasi Fatwa DSN-MUI ke dalam PBI tahun 2008-2023. Penelitian ini merupakan jenis penelitian kualitatif dengan kategori penelitian hukum normatif. Kajian utamanya berupa bahan hukum berupa PBI dan SEBI yang disandingkan dengan Fatwa DSN-MUI. Analisis yang digunakan berupa analisis konten peraturan dengan pendekatan konseptual mencari titik temu asas-asas atau prinsip yang terkait antara PBI dengan Fatwa DSN-MUI. Hasilnya menunjukkan bahwa bentuk perubahan fatwa DSN-MUI ke dalam PBI berupa penyerapan dalam ranah redaksi dan substansi. Berbagai macam nama akad dan substansi isi Fatwa DSN-MUI dipakai dan dikembangkan dalam PBI. Pola transformasi Fatwa DSN-MUI ke dalam PBI bisa diidentifikasi dalam tiga pola; pola *copy paste*, pola penyesuaian dan pola perluasan. Pola itu dipakai untuk memberikan definisi dalam ketentuan umum dan ketentuan detail operasionalnya.

Kata kunci: *Fatwa DSN-MUI; Peraturan Bank Indonesia; Positivisasi*

Introduction

Bank Indonesia Regulation (PBI) is a legally-binding product issued by Bank Indonesia. PBI serves as the legal foundation for banking activities in Indonesia, encompassing Sharia-compliant banking operations. Prior to the enactment of POJK (Financial Services Authority Regulation), sharia banking activities in Indonesia were required to refer to and rely on PBI. Failure to comply with the PBI will result in the unconstitutionality of banking activities.¹ This is due to the fact that the PBI is situated within the hierarchy of legislation as an implementing regulation of the banking law. As an implementing regulation of the law, PBI has the potential to influence the implementing regulations that are equivalent.^{2,3}

However, in order for the DSN-MUI fatwa to become a legal rule, it must first be set out in the PBI (paragraph 3 of article 26 of the PBS Law). This implies that the DSN-MUI fatwa is not a legal rule; rather, it is merely the opinion of scholars. In order to fulfill the obligation of drafting the PBI, Bank Indonesia (BI) is required to establish an Islamic Banking Committee (KPS). The procedures for the formation, membership, and duties of this committee will be further delineated in the PBI (paragraphs 4 and 5 of article 26 of the PBS Law).⁴

Following the enactment and implementation of the PBS Law until 2023, the Bank Indonesia (BI) has issued 52 PBIs pertaining to Islamic banking activities.⁵ Examples of PBIs that adopt the fatwa of DSN-MUI include PBI No. 18/2/PBI/2016 on hedging transactions based on *Shari'ah* principles. This is based on the fatwa of the National *Shari'ah* Council (DSN) Number 96/DSN-

¹ Andrew Shandy Utama, "Perkembangan Perbankan Syariah di Indonesia," *Unes Law Review* 2, No. 3 (2020): 290–98, <https://doi.org/10.31933/unesrev.v2i3.121>.

² Firdha Nabela, Nurnasrina Nurnasrina, and Heri Sunandar, "Hirarki Hukum dan Dasar Hukum Perbankan Syariah di Indonesia," *Jurnal Ekonomi Utama* 2, No. 2 (2023): 106–16, <https://doi.org/10.55903/juria.v2i2.58>.

³ Neneng Nurhasanah and Rachmat Januardi Tanjung, "Implementasi Fatwa DSN–MUI Terhadap Akad Mudharabah dalam Perbankan Syariah," *Jurnal Impresi Indonesia* 2, No. 2 (2023): 198–205.

⁴ Ahmad Badrut Tamam, "Kedudukan Fatwa Majelis Ulama Indonesia (MUI) dan Fatwa Dewan Syariah Nasional (DSN) dalam Sistem Hukum Indonesia," *Al-Musthofa: Journal of Sharia Economics* 4, No. 2 (2021): 172–81.

⁵ "Peraturan Bank Indonesia," Bank Indonesia, 2024, <https://www.bi.go.id/id/publikasi/peraturan/Default.aspx>.

MUI/IV/2015 on *Shari'ah* hedging transactions (*Al-Tahawwuth al Islami/*Islamic Hedging) on exchange rates.

The issuance of the Fatwa DSN-MUI in the context of the PBI has resulted in the fatwa, which was previously an opinion of scholars, becoming a legally binding directive for all actors involved in the realm of Sharia banking activities.⁶ A fatwa, by definition, is an explanation of Sharia law that does not have binding force. This is elucidated in various scholarly texts, which posit that fatwas serve as the opinion of a mujtahid on the issues raised and do not possess binding authority over *mustafti* (individuals who seek fatwas).⁷

In the context of Indonesian law, fatwas are not considered to be among the hierarchies of legislation in Indonesia. This is in accordance with the provisions set forth in Article 7, Paragraph (1) of Law No. 12/2011 on the Formation of Legislation. Similarly, Article 8, paragraphs (1) and (2) of the same law do not mention fatwa products in the hierarchy of legislation.

In consideration of the preceding description, it would be beneficial to undertake a more in-depth analysis of the transformation of Fatwa DSN-MUI into the form of a statutory product, specifically as a PBI. The Fatwa DSN-MUI, which was not intended to have binding authority and was designed to be open to interpretation, has undergone a transformation into a directive that must be adhered to and implemented by sharia-compliant financial institutions. There are observable tendencies, similarities, and a set of rules in PBI that refer to Fatwa DSN-MUI. This paper aims to elucidate the nature of the changes that have occurred in Fatwa DSN-MUI and to identify the pattern of transformation of Fatwa DSN-MUI into PBI between 2008 and 2023.

⁶ Muhamad Izazi Nurjaman and Dena Ayu, "Eksistensi Kedudukan Fatwa DSN-MUI Terhadap Keberlangsungan Operasional Bisnis di Lembaga Keuangan Syariah," *Al Iqtishod: Jurnal Pemikiran dan Penelitian Ekonomi Islam* 9, No. 2 (2021): 55–67, <https://doi.org/10.37812/al-iqtishod.v9i2.245>.

⁷ Imaro Sidqi and Doli Witro, "Kedudukan Fatwa Majelis Ulama Indonesia (MUI) dalam Perspektif Hukum Islam dan Nasional: Studi Implikasi Fatwa terhadap Masyarakat," *Nizham: Jurnal Studi Keislaman* 8, No. 01 (2020): 20–31.

Research Method

This paper presents the findings of qualitative research, which has been classified as library research and presented in the format of normative law.⁸ As this research is of the nature of normative legal research, its focus lies upon legal materials, in the form of PBI, and Fatwa DSN-MUI. The legal materials obtained will be examined using a statutory and conceptual approach with regard to PBI.

The data in this study are primary data and secondary data. Primary data is in the form of legal products (PBI 2008-2018) and Fatwa DSN-MUI. The secondary material is in the form of studies in books and journal articles that are related and have a correlation with the primary material. The primary and secondary data were obtained through the documentation method. The document of PBI related to Sharia Banking is downloaded from the official website of Bank Indonesia in the regulation column on the page <https://www.bi.go.id/id/peraturan/perbankan/Default.aspx>. The next document search is in the form of DSN-MUI Fatwa that may be included or used in PBI. The fatwa can be obtained through the DSN-MUI website in the fatwa product column, <https://dsnemui.or.id/kategori/fatwa/>.

In addition, the obtained data will be subjected to classification and analysis with regard to the theoretical positivisation of law. The objective of this classification is to identify patterns of similarity between a number of PBIs that share common characteristics and/or similarities. Additionally, the theory of legal positivism is employed to elucidate the transition from a DSN-MUI fatwa to a PBI.

Result and Discussion

A discussion of the position of PBI within the Indonesian legislative framework

Bank Indonesia is entrusted with the responsibility of implementing monetary policies, maintaining a stable payment system, and regulating and supervising banks. Bank Indonesia is authorized to establish regulations. These regulations are set forth in the Bank Indonesia Regulations. A Bank Indonesia

⁸ Muhammad Syahrum, *Pengantar Metodologi Penelitian Hukum: Kajian Penelitian Normatif, Empiris, Penulisan Proposal, Laporan Skripsi dan Tesis* (CV. Dotplus Publisher, 2022).

Regulation is a legal provision established by Bank Indonesia and is binding upon all individuals and entities. It is published in the State Gazette of the Republic of Indonesia.⁹ In addition to the Bank Indonesia Regulation, Bank Indonesia issues other regulatory products in the form of board of governor regulations. This regulation is intended to regulate the order and work of the board of governors. This regulation contains internal rules, among others, regarding the orderly implementation of the duties and authority of the Board of Governors, staffing, and organization of Bank Indonesia.¹⁰

Furthermore, in addition to the PBI and the regulations established by the Board of Governors, Bank Indonesia also develops regulatory products in the form of regulations set forth by the Board of Governors and internal regulations. In the past, Bank Indonesia also issued Bank Indonesia Circular Letters, which were derivative regulations of Bank Indonesia Regulations. However, following the enactment of PBI number 18/42/PBI/2016, Bank Indonesia ceased issuing SEBI (Bank Indonesia Circular Letter). Consequently, all extant SEBIs are now regarded as constituting part of the Board of Governors Regulations.¹¹

Bank Indonesia, as one of the state institutions, is authorized to issue binding regulations. In light of the legal framework governing banking and Bank Indonesia, it can be argued that the PBI represents a specific category of legislation. Consequently, despite the Governor of Bank Indonesia holding a ministerial position, the regulations issued are regarded as being on a par with government regulations in terms of their implementation of the law.¹²

A PBI is established to fulfil the duties and authority of Bank Indonesia. It would be inaccurate to suggest that PBI is without consequence. In accordance

⁹ Zaka Firma Aditya and Muhammad Reza Winata, "Rekonstruksi Hierarki Peraturan Perundang-Undangan di Indonesia (Reconstruction of The Hierarchy of Legislation In Indonesia)," *Negara Hukum: Membangun Hukum untuk Keadilan dan Kesejahteraan* 9, No. 1 (2018): 79–100.

¹⁰ Jimrid Darisa, "Suatu Tinjauan terhadap Kelembagaan Bank Indonesia sebagai Bank Sentral Berdasarkan Undang-Undang No. 6 Tahun 2009," *Lex Privatum* 9, No. 6 (2021).

¹¹ Nabela, Nurnasrina, and Sunandar, "Hierarki Hukum dan Dasar Hukum Perbankan Syariah di Indonesia."

¹² A'an Efendi, "Problematika Penataan Jenis dan Hierarki Peraturan Perundang-Undangan," *Veritas et Justitia* 5, No. 1 (2019): 20–48, <https://doi.org/10.25123/vej.3172>.

with the stipulations set forth in the implementing regulation of the law, any other implementing regulations (outside BI) must be synchronized with PBI. As a regulation enacted by a state institution, PBI is legally binding and specific in its scope. Nevertheless, despite its status as an implementing regulation of the law, PBI cannot be aligned with government regulations.¹³

Transformation of Fatwa DSN-MUI on PBI

Over the course of a decade (2008-2018), Bank Indonesia issued a total of 42 PBIs, which pertain to or regulate Islamic banking. The PBIs provide a comprehensive set of technical regulations pertaining to a range of financial products, banking management, and organizational structures within Islamic banking. Additionally, they encompass technical guidelines for addressing challenging credit transactions in Islamic banking.¹⁴

In principle, the PBI adheres to the mandate of Islamic banking law, and thus is based on or refers to the fatwa of DSN MUI. The DSN MUI is the institution with the authority to issue fatwas. Furthermore, the document contains a clause indicating that in the absence of legal regulation from the government, the fatwa of DSN MUI can be utilized as a reference. Nevertheless, it should be noted that not all PBIs encompass the entirety of the fatwa issued by DSN MUI. The author's review yielded the finding that at least 14 PBIs merely require Islamic banking actors to comply with Sharia principles.

The clause stipulating the necessity to apply sharia principles and/or adhere to sharia principles as defined by the MUI National Sharia Council renders the MUI DSN Fatwa a legal document of significant value. The terminology employed does not allow for the attainment of sharia "legality" outside the purview of the DSN MUI fatwa.¹⁵ The extensive scope of these sources lends substantial credibility to the DSN MUI fatwa, rendering it a

¹³ Nabela, Nurnasrina, and Sunandar, "Hirarki Hukum dan Dasar Hukum Perbankan Syariah di Indonesia."

¹⁴ Al-Hakim, "Perkembangan Regulasi Perbankan Syariah di Indonesia."

¹⁵ Eja Armaz Hardi, "Fatwa DSN-MUI dan Perkembangan Produk Perbankan Syariah di Indonesia," *An-Nisbah: Jurnal Ekonomi Syariah* 6, No. 1 (2019): 82-105, <https://doi.org/10.21274/an.2019.6.1.82-105>.

valuable reference point in the formulation of PBI as a component of state regulations.

A fatwa is a legal order produced by individuals who possess a comprehensive understanding of Islamic law, or fiqh.¹⁶ In issuing the fatwa, the relevant authorities considered a number of factors, including the principal tenets of Islamic teachings as set forth in the Quran and the hadith, the opinions of previous scholars, and the prevailing circumstances. Consequently, the opinion or fatwa is of greater value and is required by the broader community.¹⁷

In view of the fact that the DSN MUI fatwa represents the culmination of a process of scholarly ijihad, it may be regarded as a source of guidance for Muslims in the conduct of their personal and public lives.¹⁸ The term "ulama" is used to refer to a group of scholars who are gathered in the DSN MUI. These individuals are considered to possess a high level of knowledge and expertise in the interpretation of the Koran and hadith.¹⁹ Consequently, the implementation of the fatwa of DSN MUI, or its incorporation into PBI, would result in the same outcome as if the PBI were to be implemented in accordance with the fatwa of DSN MUI. In the words of Qadri Azizy, Islamic law serves to inform and influence national law, acting as a source of both material law and legal morality.²⁰ The results of the author's subsequent investigation revealed that ten PBIs had been designated as absorbing the DSN MUI fatwa. The absorption is evident from the definition to the technical operation. The 10 PBIs are as follows:

¹⁶ Zaka Firma Aditya, "Romantisme Sistem Hukum di Indonesia: Kajian Atas Kontribusi Hukum Adat dan Hukum Islam terhadap Pembangunan Hukum di Indonesia," *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional* 8, No. 1 (2019): 37–54.

¹⁷ Abdurrohman Kasdi, "Contribution of National Sharia Council Fatwa of Indonesian Council of Ulama (DSN-MUI) in The Islamic Economic Development in Indonesia," *IQTISHADIA: Jurnal Kajian Ekonomi Da Bisnis Islam* 1, No. 1 (2018): 47–64.

¹⁸ Muhamad Izazi Nurjaman and Doli Witro, "Penyelesaian Sengketa Ekonomi Syariah Menurut Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia (DSN-MUI)," *Al-Huquq: Journal of Indonesian Islamic Economic Law* 4, No. 1 (2022): 35–62.

¹⁹ Sari Damayanti, "Tinjauan Fatwa MUI Tentang Lembaga dan Keuangan Syariah," *Waratsah: Jurnal Ilmu-Ilmu Keislaman dan Sosiolinguistik* 7, No. 2 (2021): 62–71.

²⁰ Wildani Hefni, "Pemikiran Hukum Nasional A. Qodri Azizy: Eklektisisme Hukum Islam dan Hukum Umum," *Undang: Jurnal Hukum* 5, No. 2 (2022): 481–511.

- 1) PBI Number: 10/18/PBI/2008, concerning Financing Restructuring for Sharia Banks and Sharia Business Units.
- 2) PBI Number 11/24/PBI/2009 concerning Sharia Short-Term Funding Facilities for Islamic Commercial Banks.
- 3) PBI Number 11/29/PBI/2009, which addresses the subject of Sharia Short-Term Funding Facilities for Sharia People's Financing Banks.
- 4) PBI Number: 13/9/PBI/2011, concerning Amendments to Bank Indonesia Regulation Number 10/18/PBI/2008, which pertains to Financing Restructuring for Sharia Banks and Sharia Business Units.
- 5) PBI Number: 13/13/PBI/2011, which pertains to the assessment of asset quality for Sharia commercial banks and Sharia business units.
- 6) PBI Number: 13/14/PBI/2011, entitled "Asset Quality Assessment for Sharia People's Financing Banks."
- 7) PBI Number 14/1/PBI/2012 on the Amendment of Bank Indonesia Regulation Number 9/5/PBI/2007 on Interbank Money Market Based on Sharia Principles.
- 8) PBI Number 14/20/PBI/2012 regarding the Amendment to Bank Indonesia Regulation Number 11/24/PBI/2009 regarding the Sharia Short-Term Funding Facility for Sharia Commercial Banks.
- 9) PBI Number 18/2/PBI/2016 Regarding Hedging Transactions Based on Sharia Principles.
- 10) PBI Number 19/4/PBI/2017 regarding Sharia Short-Term Liquidity Financing for Sharia Commercial Banks.

In the ten PBIs, there are several types of transactions (contracts) that are included in the DSN MUI fatwa. The names of contracts such as *mudharabah*, *musyarakah*, *murabahah*, *salam*, *istishna'*, and others become an integral part of the articles that make up the PBI. The incorporation of different types of contracts can be seen in their definitions and operations. At a certain level, PBI provides additional operations to meet the needs of Islamic banking management. In terms of definition, there are eight types of contracts covered by PBI, namely *Mudharabah* contracts, *Salam* sale and purchase, *Istisna'* sale and purchase, *Ijarah* financing, *Qardh* and modern contracts.

First, *Mudharabah* Agreement

This is stated in the fatwa of DSN MUI number 07/DSN-MUI/IV/2000. DSN MUI defines *Mudharabah* contracts for cooperation between Islamic financial institutions in general. The DSN MUI fatwa states that *Mudharabah*

contracts are financing channeled by LKS to other parties for a productive business.²¹ PBI modifies the conventional definition of the *mudharabah* contract to align with the operational requirements of Islamic banking. At least five PBIs have been developed to define the *mudlarabah* contract, all of which maintain the existence of fund owners and fund managers.

Firstly, PBI Number 11/24/PBI/2009, which concerns Sharia-compliant short-term funding facilities for Islamic commercial banks. The objective of this PBI is to maintain the liquidity of an Islamic commercial bank. In order to clarify the definition of *Mudarabah* in this PBI, it should be stated that *Mudarabah* is an agreement between the owner of funds and fund managers to maintain the liquidity of the Bank.

Secondly, PBI Number 11/29/PBI/2009 on Sharia Short-Term Funding Facilities for Sharia People's Financing Banks. This PBI reiterates the previous PBI's emphasis on liquidity matters in the use of *mudlarabah* contracts, but with a focus on BPRS institutions. According to this PBI, "Mudharabah is an agreement between the fund owner and fund manager to maintain the liquidity of BPRS."

Thirdly, PBI Number: 13/13 /PBI/2011, which concerns the Asset Quality Assessment for Islamic Commercial Banks and Islamic Business Units. In accordance with this PBI, *Mudharabah* Financing is defined as a form of business cooperation between a bank that provides all the capital and a customer who acts as the fund manager, dividing the business profits in accordance with the agreement stated in the contract. The loss is fully borne by the bank, unless the customer commits willful misconduct, negligence, or violates the agreement. This definition places emphasis on the cooperative relationship between banks and their customers.

Fourth, PBI Number: 13/14/PBI/2011, which concerns the assessment of the quality of assets for Sharia-compliant People's Financing Banks. In contrast to PBI Number: 13/13 /PBI/2011, the definition of *mudlarabah* presented here is intended for Sharia People's Financing Banks. The definition of *mudharabah*

²¹ Eka Wahyu Hestya Budiarto, "Pemetaan Penelitian Akad Mudharabah pada Lembaga Keuangan Syariah: Studi Bibliometrik Vosviewer dan Literature Review," *J-EBIS (Jurnal Ekonomi dan Bisnis Islam)*, 2022, 43–68.

financing, as provided in the text, is as follows: "Mudharabah financing is a form of business cooperation between BPRSs (Bank Perkreditan Rakyat Syariah, or Sharia People's Financing Banks) that provides all the capital and customers who act as fund managers by dividing business profits in accordance with the agreement as stated in the contract, while losses are fully borne by BPRSs unless the customer commits willful misconduct, negligence, or violates the agreement."

Fifth, PBI Number 19/4/PBI/2017, which concerns Sharia Short-Term Liquidity Financing for Sharia Commercial Banks. As elucidated in the article of this PBI, the "mudharabah contract" is a business cooperation contract between the first party (malik, shahibul mal, or the Bank) who provides all the capital and the second party ('amil, mudharib, or customer) who acts as a fund manager by dividing the profit of the business according to the agreement stated in the contract, while the loss is fully borne by the Bank unless the second party commits willful misconduct, negligence, or violates the agreement.

Second, Sale and Purchase Agreement for *Salam*

The DSN MUI fatwa pertaining to the salam sale and purchase contract is DSN MUI Fatwa Number 05/DSN-MUI/IV/2000. In accordance with this fatwa, the salam sale and purchase contract is defined as a sale and purchase of goods by ordering and paying the price in advance, subject to specific conditions.²² The definition of Salam contract for sale and purchase is subsumed within two PBIs.

PBI Number: 13/13/PBI/2011, which concerns the assessment of the quality of assets held by Islamic commercial banks and Islamic business units. Here, the salam sale and purchase contract is harmonized to be more flexible, becoming a salam financing contract. This is defined as "financing of an item by means of an order and payment of the price made in advance under certain agreed conditions."

PBI Number: 13/14/PBI/2011, which concerns the assessment of asset quality for Islamic public finance banks. This PBI incorporates the salam sale and purchase contract using the same terminology and definition as PBI Number:

²² Sri Sofiana Amni and Ani Faujiah, "Manajemen Akad Salam dalam Lembaga Keuangan Syariah," *Ekosiana: Jurnal Ekonomi Syariah* 7, No. 1 (2020): 20–34, <https://doi.org/10.47077/ekosiana.v7i1.28>.

13/13/PBI/2011, namely "Financing of an item by way of reservation and payment of the price made in advance under certain agreed conditions."

Third, Sale and Purchase Agreement for *istishna'*

The fatwa DSN MUI contains provisions regarding the sale and purchase of *istishna'* as outlined in fatwa DSN MUI Number 06/DSN-MUI/IV/2000. In accordance with this fatwa, an *istishna'* sale and purchase constitutes a sale and purchase agreement in the form of an order for the manufacture of specific goods, with agreed-upon criteria and requirements between the customer (buyer, *mustashni'*) and the seller (maker, *shani'*).²³ This account was incorporated into two separate PBIs (PBI Number: 13/13/PBI/2011 and PBI Number: 13/14/PBI/2011), with identical wording. The financing in question is that of an item in the form of an order for the manufacture of certain goods, with certain criteria and requirements agreed upon between the customer and the seller or manufacturer of the goods.

Fourth, the Financing Agreement for *Ijarah*

The transfer of benefits without transferring ownership is regulated in Fatwa DSN MUI Number 09/DSN-MUI/IV/2000 concerning *Ijarah* Financing. In accordance with this fatwa, "*Ijarah*" is defined as a contract for the transfer of the right to use (benefits) of an item within a specified period by way of payment of rent (*ujrah*), without the transfer of ownership of the item itself.²⁴

This agreement is encompassed by three distinct types of PBI. Two of the definitions utilize the same wording, namely, "*Ijarah* Financing," which is defined as "financing in order to transfer the use rights or benefits of an item or service based on a lease transaction, without being followed by the transfer of ownership of the goods themselves." This definition is found in PBI Number: 13/13/PBI/2011 and PBI Number: 13/14/PBI/2011.

It should be noted that PBI Number 19/4/PBI/2017, which pertains to Sharia Short-Term Liquidity Financing for Sharia Commercial Banks, employs the

²³ Lalu Muh Reza Pratama and Ahmadiyah Rojalih Jawab, "Implementasi Salam dan *Istishna* di Lembaga Keuangan Syariah," *Al-Karim: Journal of Islamic and Educational Research* 1, No. 2 (2023): 91–108.

²⁴ Fitri Hayati and Sri Sudiarti, "Penerapan Rahn, Wadi'ah dan *Ijarah*," *Jurnal Ekonomi dan Bisnis Islam* 1, No. 2 (2022): 83–92, <https://doi.org/10.55537/mumtaz.v1i2.181>.

term "non-service ijarah agreement" in its explanatory text. According to the article, this term refers to an agreement through which funds are made available in order to transfer the use rights or benefits of an item based on a lease transaction. However, the transfer of ownership of the item itself does not occur, and ownership remains with the original owner.

Fifth, *al-qardh* Agreement

In accordance with the definition set forth in DSN MUI Fatwa Number 19/DSN-MUI/IV/2001 concerning *al-Qardh*, an *al-qardh* contract may be understood as a loan contract between a customer and a LKS. The stipulation inherent to this contract is that the customer is obliged to return the funds received to the LKS at a time agreed upon by both parties.²⁵ This definition is fully absorbed in PBI Number: 13/13/PBI/2011 and PBI Number: 13/14/PBI/2011 by ignoring the phrase "LKS," so that it reads, "Qardh Financing is Financing in the form of a loan of funds to a customer with the provision that the customer is obliged to return the funds received at an agreed time."

Sixth, modern Agreement

The DSN MUI has issued several fatwas pertaining to contracts that are categorized as modern contracts. Such contracts are classified as *ghairu musamma* contracts and frequently take the form of *murakkab* contracts. Such contracts are a requisite component of the financial market in Islamic banking.²⁶ Three fatwas have been issued by DSN MUI and incorporated into PBI. Firstly, the DSN MUI Fatwa No. 78/DSN-MUI/IX/2010 on the Interbank Money Market Based on Sharia Principles (PUAS) is presented. Secondly, the DSN MUI Fatwa Number 96/DSN-MUI/IV/2015 on Sharia Hedging Transactions. Thirdly, the DSN MUI Fatwa Number 109/DSN-MUI/II/2017 on Short-Term Liquidity Financing, which is abbreviated as PLJP.

²⁵ Siska Hana Pertiwi and Iza Hanifuddin, "Analisis Qardhdalam Pembiayaan Rahn di Lembaga Keuangan Syariah, Indonesia (Studi Kasus Pinjaman Usaha)," *Niqosiya: Journal of Economics and Business Research* 1, No. 2 (2021): 173–96, <https://doi.org/10.21154/niqosiya.v1i2.276>.

²⁶ Dimas Kenn Syahrir and Erika Amelia, "Implementation of Hybrid Contracts in the Gold Pawn Practice in Sharia Pawnshops," *Iqtisad: Reconstruction of Justice and Welfare for Indonesia* 10, No. 2 (2023): 131–148, <https://doi.org/10.31942/iq.v10i2.8333>.

In the context of national legal development, the definition in PBI, which incorporates the DSN-MUI fatwa, constitutes a component of the evolution of legal materials. The term "development in this area" is used to refer to the basic norms of the State (Pancasila), which requires the incorporation of various sources of law that exist within society.²⁷ These efforts are ultimately intended to support one of the principal directions of national development policy, namely the development of laws and regulations designed to facilitate economic activities.²⁸ Given that PBI plays a pivotal role in the smooth functioning of Islamic banking activities.

The incorporation of the DSN-MUI fatwa into the operational framework of PBI is also contingent upon the terms of contractual operations. A review of the author's findings indicates that several fundamental provisions of the operational contract of the DSN MUI fatwa were incorporated into six PBIs between the years 2008 and 2018. This incorporation was achieved through an adjustment to the requirements of Islamic banking management. The following section will present two PBIs as illustrative examples.

Firstly, we consider PBI Number: 10/18/PBI/2008, which concerns the restructuring of financing for Sharia banks and Sharia business units. The restructuring of financial obligations in accordance with this PBI may be accomplished through three distinct methodologies: rescheduling, reconditioning, and restructuring. These three efforts represent the bank's prerogative to assist customers in meeting their financial obligations.²⁹ This PBI incorporates the fatwa of DSN MUI by including a clause that specifies its implementation in accordance with the provisions of the aforementioned fatwa. Article 9, paragraph 1 of this PBI explicitly states that "Financing Restructuring is carried out by taking into account the applicable fatwa of the Indonesian Ulema Council." Subsequently, Article 15, Number (1) stipulates that financing in the

²⁷ Hariyanto Hariyanto, "Pembangunan Hukum Nasional Berdasarkan Nilai-Nilai Pancasila," *Volksgeist: Jurnal Ilmu Hukum dan Konstitusi* 1, No. 1 (2018): 53–63, <https://doi.org/10.24090/volksgeist.v1i1.1731>.

²⁸ Fitrihanur Syarif, "Perkembangan Hukum Ekonomi Syariah di Indonesia," *Pleno Jure* 9, No. 2 (2019): 1–16, <https://doi.org/10.37541/plenjure.v8i2.38>.

²⁹ Abdul Kholiq and Rizqi Rahmawati, "Dampak Implementasi Restrukturisasi Pembiayaan Terhadap Likuiditas Bank Syariah pada Situasi Pandemi Covid-19," *El Barka: Journal of Islamic Economics and Business* 3, No. 2 (2020): 282–316.

form of murabahah receivables or istishna' receivables can be restructured through the following means: rescheduling, reconditioning, and restructuring.

By paying attention to these provisions, there are at least three types of fatwa related to this PBI: Fatwa DSN MUI No. 48/DSN MUI/II/2005 on Rescheduling Murabahah Bills, Fatwa DSN MUI No. 47/DSNMUI/II/2005 on Settlement of Murabahah Receivables for Customers Unable to Pay, and Fatwa DSN MUI No. 49/DSN-MUI/II/2005 on Conversion of Murabahah Agreements. The three types of fatwa in question serve as indirect regulations that must be implemented in order to comply with the PBI. It is unclear from other articles how the rescheduling, reconditioning, and restructuring procedures are to be carried out.³⁰

This PBI was revised in PBI Number: 13/9/PBI/2011 to incorporate amendments to Bank Indonesia Regulation Number 10/18/PBI/2008 concerning Financing Restructuring for Sharia Banks and Sharia Business Units. A number of provisions were updated in order to refine and complement the previous PBI. The amendments pertain to the specifics of reconditioning and restructuring as part of the restructuring procedures for Sharia Commercial Banks and Sharia Business Units.

The principles of mudharabah as outlined in the DSN MUI fatwa are applied in this PBI. Firstly, with regard to the utilisation of collateral. The DSN MUI fatwa states, "In principle, in mudharabah financing there is no collateral. However, in order to prevent any deviation on the part of the mudharib, LKS may request collateral from the mudharib or third parties." The guarantee may only be disbursed if it can be demonstrated that the mudharib has breached the terms of the contract.

This PBI requires collateral in the provision of FJPS for Islamic commercial banks or Islamic People's Financing Banks.³¹ Article 4 states, "FPJPS must be guaranteed by the Bank with high quality collateral of sufficient value as

³⁰ Wili Dani Anwar Soleh Siregar, Ahmad Amin Dalimunthe, and Nursantri Yanti, "Analisis Efektivitas Restrukturisasi Pembiayaan Selama Covid-19 Terhadap Penurunan NPF (Studi Kasus BSI KC Medan S. Parman)," *Jurnal Cakrawala Ilmiah* 2, No. 9 (2023): 3377–94, <https://doi.org/10.53625/jcijurnalcakrawalailmiah.v2i9>.

³¹ Mariya Ulpah, "Konsep Pembiayaan dalam Perbankan Syariah," *Madani Syaria'h* 3, No. 2 (2020): 147–60, <https://stai-binamadani.e-journal.id/Madanisyarlah/article/view/208>.

stipulated in this Bank Indonesia Regulation." The types of collateral are then detailed in more detail in article 5 to article 8. Indirectly, PBI provides additional or explanatory operations related to collateral in mudlarabah contracts.

Second, the time period. In this case, the DSN MUI fatwa allows the parties to the transaction (mudlarib and shahibul maal) to agree on the term of the mudlarabah contract. In this PBI, Bank Indonesia stipulates certain time limits, which may be extended. In accordance with Article 12 of this PBI, the maximum duration of each FPJPS is 14 days. The period may be extended in accordance with the stipulations set forth in number 2, which states, "The period as referred to in paragraph (1) can be extended consecutively with a maximum overall FPJPS period of 90 (ninety) days."

This PBI was revised to PBI Number 14/20/PBI/2012, which pertains to Amendments to Bank Indonesia Regulation Number 11/24/PBI/2009 concerning Sharia Short-Term Funding Facilities for Sharia Commercial Banks. This PBI update provides a more detailed explanation of the collateral in FPJPS.

The aforementioned provisions, as set forth in multiple PBIs, illustrate the influence of the DSN-MUI fatwa on the definitions and operational contracts that govern Sharia banking. This reinforces the viewpoint of Husaini et al. regarding the reinforcement, facilitation, and integration of Islamic law, as exemplified by the DSN-MUI fatwa, into the formation of national legislation.³²

³² Hasan Husaini et al., "Peran Hukum Islam dalam Pembangunan Hukum Nasional di Indonesia," *UNES Law Review* 6, No. 2 (2023): 4285–4292.

Conclusion

The Indonesian central bank, Bank Indonesia, issued a series of regulations, known as PBIs, between 2008 and 2023. These regulations were designed to regulate Islamic banking in Indonesia. Over the course of the decade, the Bank Indonesia (BI) issued no fewer than 52 PBIs. The regulation was based on 31 fatwas of the DSN MUI. The findings of this study and the accompanying description lead to two conclusions. First, the form of change in the DSN MUI fatwa into a PBI is in the form of taking the substance and redaction. The DSN MUI fatwa stipulates various types of contracts, including simple contracts such as murabahah, salam, istishna', mudharabah, musyarakah, and ijarah, as well as complex contracts, such as murakkab and hybrid contracts, such as ijarah muntahiya bit tamlik, musyarakah mutanaqishah, gold murabahah, and sharia hedging transactions. These contracts are used by Bank Indonesia in preparing PBI. Secondly, the transformation of the DSN-MUI fatwa into the PBI can be identified in three distinct patterns: the copy and paste pattern, the adjustment pattern, and the expansion pattern. The copy and paste pattern is evident in the definition of simple contracts in the DSN-MUI fatwa, which is also reflected in the PBI. The adjustment pattern is designed to align the criteria for contract validity with the requirements of Islamic banking. The expansion pattern is employed to provide more detailed criteria in accordance with operational needs in Islamic banking.

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