

The Relevance of Secondary Sources of Islamic Economic Law in Responding to Sharia Financial Innovation in Indonesia

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Abstract

Sharia financial innovation in Indonesia, from digital banking services to the productive use of zakat, regularly produces transactions that the Qur'an and Sunnah do not regulate in detail. This study analyses the relevance of four supplementary methods of Islamic legal reasoning, istihsan, istishab, maslahah mursalah and 'urf, in responding to such innovation. It is normative legal research that uses conceptual and statutory approaches and analyses classical and modern works on usul al-fiqh, the statutes on sharia banking and zakat and the fatwas of the National Sharia Board of the Indonesian Council of Ulama (DSN-MUI) on istishna', electronic money and technology-based financing. The analysis shows that the four methods are not interchangeable: each has its own ground, conditions and limit, and each answers a different question, namely whether an exception to a general rule is justified, which starting presumption applies, whether a measure serves a genuine public interest, and whether a prevailing practice may be recognised. The fatwas examined invoke benefit and public interest openly but do not name the other methods, so the link between method and fatwa is an analytical reconstruction. The study concludes that the methods remain relevant only as disciplined reasoning, subordinate to the texts, the fatwa authority and positive law, and recommends that fatwa reasoning be stated more explicitly.

Keywords

Istihsan; Istishab; Maslahah; Urf; Fatwa; Sharia

Introduction



Indonesia's economy has developed rapidly in sharia finance. Sharia banking, digital financial services, sharia investment instruments and the productive management of zakat now coexist, and each of them gives Muslims a way to transact in line with Islamic norms. The same development raises a problem of legal determination: how is the status of a new product or transaction to be decided when the primary sources do not regulate it in detail? Islamic economic law (*hukum ekonomi Islam*) must therefore have methods of legal reasoning that follow social change without abandoning the basic principles of sharia.

Islamic economic law is the part of Islamic law that governs economic activity: transactions, ownership of property, exchange, investment and the distribution of wealth. Its primary sources are the Qur'an and the Sunnah, supplemented by consensus (*ijma'*) and analogy (*qiyas*).¹ Beyond these, Islamic legal theory recognises further methods that are disputed in scope but widely used in practice: *istihsan* (juristic preference), *istishab* (presumption of continuity), *maslahah mursalah* (unrestricted public interest) and *'urf* (custom).² This article calls them secondary sources of Islamic economic law for convenience, following common usage in Indonesian scholarship, but they are better understood as methods of legal reasoning that operate in the space the primary texts leave open. The distinction matters because a method is not a source of rules independent of the texts. It is a way of applying them, and it carries conditions.

The relevance of these methods is easy to state and hard to bound. Developing a sharia banking contract needs an assessment of the form of the transaction, the rights and duties of the parties and its consistency with justice; the productive use of zakat needs a judgment on benefit so that zakat funds produce lasting gains for those entitled to receive them; and a new financial instrument needs careful legal study before it is offered. But the methods cannot be used without limits. An appeal to benefit cannot justify a transaction sharia prohibits, and a custom cannot become a legal ground if it contains usury (*riba*), fraud or excessive uncertainty (*gharar*).

Earlier studies approach this question from three directions. Fateh analysed the DSN-MUI fatwas issued between 2000 and 2017 and found that benefit (*maslahah*) and the objectives of sharia run through them, and that the most frequently used legal maxim is the presumption that dealings (*mu'amalat*) are permitted unless a text prohibits them.³ Mubarak and Mahfudz examined how the DSN-MUI derives its

¹ Abdul Wahhab Khallaf, *Ilmu Ushul Fiqh* (Cairo: Maktabah al-Da'wah al-Islamiyyah).

² Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd ed (Cambridge: Islamic Texts Society, 2003).

³ Mohammad Fateh, "Konstruksi Filosofis Fatwa DSN-MUI [Philosophical Construction of the DSN-MUI Fatwas]" (2018) 16:2 *Jurnal Hukum Islam* 155, DOI: <10.28918/jhi.v16i2.1736>.

rulings and found that it relies mainly on a selective approach (*intiqā'i* or *takhyiri*) that favours benefit and practical solutions over choosing the strongest evidence.⁴ Hidayati and others studied the DSN-MUI fatwas on digital finance and reported that the board applied causal-analogical (*ta'lili*) and benefit-oriented (*istislahi*) reasoning to hold electronic money, digital financing and crowdfunding permissible.⁵ These studies describe how the board reasons. What they do not do is take the four classical methods one by one, state the conditions of each, and test which of them can properly support which kind of financial innovation, while keeping the limits of each in view.

That is the gap this article addresses. Its contribution is a method-by-method assessment: for each of *istihsan*, *istishab*, *maslahah mursalah* and *'urf* it states the function, the conditions of valid use and the typical misuse, and it then applies them to three Indonesian examples, the DSN-MUI fatwas on electronic money and technology-based financing, *istishna'* financing, and productive zakat. Three research questions guide it. First, why does Islamic economic law need methods of legal reasoning beyond the primary sources? Second, what are the function, conditions and limits of *istihsan*, *istishab*, *maslahah mursalah* and *'urf*? Third, to what extent can these methods support the assessment of sharia financial innovation in Indonesia without displacing the texts, the fatwa authority and positive law? The purpose is to show where the methods help and where they must stop.

Research Method

This is normative (doctrinal) legal research based on library study; it involved no fieldwork, interviews or surveys. Two approaches are used. The conceptual approach clarifies the concepts of the four methods and their place in Islamic legal theory; the statutory approach examines the legal provisions on sharia banking and zakat and the fatwas that guide sharia financial products. The primary legal materials are Law No 21 of 2008 on Sharia Banking, Law No 4 of 2023 on the Development and Strengthening of the Financial Sector, Law No 23 of 2011 on Zakat Management, and DSN-MUI Fatwas No 06/DSN-MUI/IV/2000, No 22/DSN-MUI/III/2002, No 116/DSN-MUI/IX/2017 and No 117/DSN-MUI/II/2018. The secondary materials are works on *usul al-fiqh* (Khallaf, al-Zuhaili and Kamali), a book on sharia economic law, and journal articles on zakat and on the DSN-MUI's

⁴ Jaih Mubarak & Shaifurrokhman Mahfudz, "Istinbath Methodology of DSN-MUI: Integrating Classical Islamic Jurisprudence with Contemporary Needs" (2024) 1:2 *Indonesian Journal of Islamic Economic Law* 136, DOI: <10.23917/ijoe.v1i2.5570>.

⁵ Tri Hidayati et al, "Digitalization of Islamic Finance: Epistemological Study of the National Sharia Board-Indonesian Council of Ulama's Fatwa" (2023) 33:2 *Al-Ahkam* 255, DOI: <10.21580/ahkam.2023.33.2.17324>.

fatwa methodology. The Qur'an and Sunnah are treated as the framework within which the methods operate and are not interpreted afresh here. The materials were analysed qualitatively in three steps: defining each method and its conditions from the doctrinal works, relating each to the legal materials, and comparing the result with earlier studies. The article does not examine the internal records of fatwa deliberations, so the connection it draws between a method and a fatwa is an analytical reconstruction and not evidence of what the board actually applied.

Results and Discussion

Why Methods of Legal Reasoning Are Needed

The primary sources of Islamic economic law give the basic norms, but modern economic life continually produces transactions they do not regulate in detail: payment by electronic means, digital banking, new investment instruments and technology-based financing. Other methods of reasoning, among them consensus and analogy, help to determine the law on particular questions, but analogy needs an existing case with a shared reason, and many modern transactions have none. A method of legal reasoning is therefore needed to understand and decide such questions.⁶

The need is philosophical as well as technical. Islamic law asks not only whether a transaction is valid in form but also what benefit and harm it brings to the parties. In economic activity this concern is expressed in the prohibitions of *riba*, *gharar* (excessive uncertainty), *maysir* (gambling) and conduct that harms one party. Methods of legal reasoning thus serve two functions together: they protect the principles of sharia and they respond to the changing needs of society. The DSN-MUI's practice reflects this: Mubarak and Mahfudz note that its rulings apply the principle that regard is had to the meaning and purpose of a contract and not only to its wording.⁷

Indonesian positive law gives the same need a legal home. Law No 21 of 2008 provides the legal basis for banking conducted on sharia principles,⁸ and Law No 4 of 2023 on the Development and Strengthening of the Financial Sector, which amended parts of the sharia banking framework, now forms part of the regulatory setting of the sector.⁹ The practical consequence is that sharia financial development

⁶ Sawitri Yuli Hartati, *Hukum Ekonomi Syariah* (Padang: CV Dunia Penerbitan Buku, 2026) at 10.

⁷ Mubarak & Mahfudz, *supra* note 4.

⁸ Law No 21 of 2008 on Sharia Banking (Indonesia).

⁹ Law No 4 of 2023 on the Development and Strengthening of the Financial Sector (Indonesia).

has to satisfy religious principle and enacted law together. The detail of how Law No 4 of 2023 changed particular provisions of Law No 21 of 2008 lies beyond this article and should be checked against the consolidated text before it is relied on. Seen from this angle, the four methods are not a substitute for the Qur'an and the Sunnah; they help develop the understanding of Islamic law in step with the needs of the age.

The Four Methods: Function, Conditions and Limits

Istihsan

Istihsan is the choice of the ruling that is considered more appropriate and stronger on the basis of a particular sharia reason, even though it departs from the result of ordinary analogy.¹⁰¹¹ It does not mean ruling by personal preference or because something seems good to people. Its use must rest on a ground that can be defended: a text, consensus, a stronger analogy or another consideration recognised in *usul al-fiqh*. The method is known and accepted in the Hanafi school, while the acceptance and limits of its use are debated by scholars of other schools.¹²

A standard classical example, and one that bears on Islamic finance, is the manufacturing contract (*istishna'*). Ordering an item that does not yet exist looks like a sale of a non-existent object, which ordinary analogy would forbid; the contract is permitted because people need it and it is a long-established practice. Modern sharia finance has taken it up as a financing contract: the DSN-MUI issued a fatwa on the sale and purchase by *istishna'*¹³ and a second on parallel *istishna'* in which an institution that has taken an order places a second order with a manufacturer, on the condition that the first contract does not depend on the second and that the institution takes no margin during construction.¹⁴ The permission of the contract itself is the exception; the conditions in the fatwa keep the exception from becoming a way round the prohibition of uncertainty and of profit without risk. The statement that *istihsan* underlies these fatwas is an analytical reading: the fatwas themselves are cited here for their content, not as proof of the method the board invoked.

¹⁰ Khallaf, *supra* note 1.

¹¹ Wahbah al-Zuhaili, *Ushul al-Fiqh al-Islami*, vol 2 (Damascus: Dar al-Fikr, 1986).

¹² Kamali, *supra* note 2.

¹³ Dewan Syariah Nasional–Majelis Ulama Indonesia [National Sharia Board–Indonesian Council of Ulama], Fatwa No 06/DSN-MUI/IV/2000 on Jual Beli Istishna' [Sale and Purchase by Istishna'] (2000).

¹⁴ Dewan Syariah Nasional–Majelis Ulama Indonesia [National Sharia Board–Indonesian Council of Ulama], Fatwa No 22/DSN-MUI/III/2002 on Jual Beli Istishna' Paralel [Parallel Istishna'] (2002).

Another example, the adjustment of banking services to technology such as electronic documents or new ways of giving consent, should be treated with more caution. Such changes can be analysed through the nature of the contract, the agreement of the parties, clarity of information and legal certainty, but they are technical adjustments and are not in themselves an application of *istihsan*. They qualify only if a general rule is displaced by a stronger sharia reason, and they may never turn the substance of the contract into a prohibited transaction. The value of *istihsan* is therefore that it allows reasoning that fits a particular situation; its limit is the sharia ground that must support it, which keeps flexibility from becoming a justification for transactions that benefit only one party.

Istishab

Istishab keeps an existing state or ruling in place until there is proof or a reason for change. Put simply, a legal situation that has been in force is presumed to continue until something shows that it has changed.¹⁵ The method serves legal certainty where a question has no clear rule or where the parties disagree about an earlier state of affairs. It is closely associated with the maxim that certainty is not removed by doubt, and, in transactions, with the presumption that dealings are permitted unless a text forbids them. That presumption is the form of *istishab* that matters most for finance, and the DSN-MUI's own fatwas rely on it most often: Fateh found the maxim that dealings are permitted unless prohibited to be the most frequently used rule in the fatwas he analysed, at about a third of all uses of fiqh maxims.¹⁶

In economic life *istishab* gives certainty in sale, debt, lease and other dealings. Take a debtor who says that an agreed debt has been paid, without evidence, while the lender says that no payment was received. The earlier state of the obligation is the starting point of the assessment until sufficient proof shows whether it has ended. The example must be read together with the rules of evidence, and it is not an absolute rule that a statement without documents can never be accepted. *Istishab* can likewise help to analyse a modern transaction where nothing shows that its legal status has changed, but this does not mean that every new transaction is automatically allowed. It must still be assessed by its contract, the principles of sharia and the presence of *riba*, prohibited *gharar*, fraud or injustice. The method gives a starting point for assessment, not a way of avoiding examination of new facts.

¹⁵ Khallaf, *supra* note 1.

¹⁶ Fateh, *supra* note 3.

Maslahah Mursalah

Maslahah mursalah considers the benefit of the community in matters that the Qur'an and Sunnah do not regulate specifically but that accord with the aims of sharia.¹⁷ It matters because social life keeps raising questions that no rule covers. The assessment of benefit cannot rest only on economic gain; it must also consider justice, the prevention of harm and the protection of community interests. Classical writers also attach conditions: the benefit must be real and not imagined, general and not for the advantage of a few, and consistent with the aims of sharia and not contradicted by a text.¹⁸ The method belongs especially to the Maliki tradition, though other schools use the underlying idea under other names.

Productive zakat is the clearest Indonesian example. It means using zakat funds for activity that helps those entitled to receive zakat (*mustahik*) raise their economic capacity lastingly, for instance through business capital or productive equipment, always within the rules on who may receive zakat, how funds are managed and how they are distributed. The Zakat Law allows zakat to be used for productive purposes in handling poverty; its exact provisions should be checked against the current consolidated text.¹⁹ Empirical work supports the benefit argument: Ali, Amalia and El Ayyubi compared productive and consumptive zakat using the CIBEST model, which takes account of material and spiritual aspects, and found that both forms of distribution can raise welfare and reduce poverty, with productive zakat reducing poverty more in the scope of their study.²⁰ That study measures outcomes and does not itself concern the legal method; its relevance here is that it provides evidence for one element of *maslahah*, the existence of a real benefit. It also teaches a caution, because productive zakat is not the best choice for every recipient, whose needs and circumstances differ: immediate needs may call for consumptive distribution. Benefit therefore guides the choice of programme; it cannot suspend the specific sharia rules on zakat.

Maslahah is also relevant to technology-based financial services. A digital transaction system can be judged by the ease of access it gives, together with data security, transparency and consumer protection. Innovation may then proceed without losing sight of the aims of Islamic law. The method helps judge whether a

¹⁷ Hartati, *supra* note 6 at 10.

¹⁸ Kamali, *supra* note 2.

¹⁹ Law No 23 of 2011 on Zakat Management (Indonesia).

²⁰ Khalifah Muhamad Ali, Nydia Novira Amalia & Salahuddin El Ayyubi, "Perbandingan Zakat Produktif dan Zakat Konsumtif dalam Meningkatkan Kesejahteraan Mustahik [Comparison of Productive and Consumptive Zakat in Improving the Welfare of Mustahik]" (2016) 4:1 *Al-Muzara'ah* 19, DOI: <10.29244/jam.4.1.19-32>.

programme or innovation truly brings a benefit consistent with those aims; it cannot be an excuse to ignore a specific rule or to justify a forbidden transaction.

'Urf

'Urf is a custom that has developed and been accepted in society and that may be taken into account in determining Islamic law as long as it does not conflict with the principles of sharia.²¹ In economic law it helps to understand how people actually carry on economic activity. Jurists conventionally separate sound custom from corrupt custom and general custom from local custom; only sound custom is recognised, and no custom prevails against a clear text. This shows that Islamic law is flexible towards social and economic change while holding to justice and to the prohibition of what conflicts with sharia.

In banking and sharia business, 'urf allows the performance of transactions to be fitted to developing conditions. The practice of using digital proof of transactions, for example, can be taken into account provided that it meets legal requirements and can be accounted for. By contrast, a practice that involves *riba*, fraud, injustice or another forbidden element cannot be justified merely because it is widespread. The evidence for a custom has to be shown and cannot simply be assumed: an assertion that a practice is customary needs a demonstration that it is general, settled and accepted among the people concerned. In this respect 'urf is the method on which the sources used here say least, and its application to Indonesian sharia finance is the part of the analysis that most needs further empirical study.

Comparing the Four Methods

Table 1 summarises the four methods. They differ in the question each answers, which is why they are not interchangeable, and in the typical misuse each invites.

Table 1. Function, conditions and limits of the four methods

Method	Question it answers	Conditions of valid use	Illustration in sharia finance	Typical misuse
<i>Istihsan</i>	Is an exception to the general rule or analogy justified?	A defensible ground: text, consensus, stronger analogy or necessity; never mere preference	<i>Istishna'</i> financing, permitted subject to the conditions in Fatwas 06/2000 and 22/2002	Using preference to avoid a prohibition
<i>Istishab</i>	Which starting presumption applies until proof of change?	No proof of change; read with the rules of evidence	Dealings are presumed permitted unless a text forbids; an existing debt remains until payment is shown	Treating a new product as lawful without examining its contract
<i>Maslahah mursalah</i>	Does the measure serve a real public interest?	Real, general, consistent with the aims of sharia and not contradicted by a text	Productive zakat; assessment of digital financial services	Using benefit to justify a prohibited gain

²¹ Kamali, *supra* note 2.

'Urf	May a prevailing practice be recognised?	Sound, general and settled custom that does not conflict with a text	Digital proof of transactions, where legally acceptable	Treating a widespread practice as lawful
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Source: compiled by the authors from the works and fatwas cited in this section.

Application to Sharia Financial Innovation in Indonesia

The development of sharia economic activity in Indonesia shows that these methods have a role in assessing new forms of transaction. Innovation in banking, investment, zakat management and digital financial services requires study so that its implementation follows not only technology but also sharia. Two fatwas illustrate this: the fatwa on sharia electronic money, which sets out the legal relations among the parties to an electronic money transaction and the general principles that must be followed,²² and the fatwa on information-technology-based financing, which lays down general sharia principles for such services, such as avoiding *riba*, *gharar*, *maysir* and fraud, and lists the contracts that may be used.²³ Both provide sharia guidance for financial services that have grown through technology.

How do the four methods relate to these fatwas? Custom ('urf) helps explain why electronic means are now accepted in transactions. *Maslahah* provides a framework for weighing the benefit and risk of digital services. *Istishab* supplies the starting presumption of permissibility in dealings, and *istihsan* may enter where a general rule yields to a stronger ground. The relationship is an analytical reconstruction. Hidayati and others, who analysed the content of these fatwas, report that the board reasoned causally and by benefit and held electronic money, digital financing and crowdfunding permissible where they serve sharia-based benefit,²⁴ which supports the place of *maslahah* in this field but does not show that the board also relied on the other three methods. The claim that each fatwa was established by all four methods cannot be sustained.

Productive zakat has been treated above as a case of *maslahah*. Its management still has to follow the rules on recipients, purpose of distribution and legislation, so benefit needs to be matched by proper and accountable implementation. The same disciplined approach applies to a new instrument for which no fatwa exists. The four methods can serve as a first analytical tool for identifying the contract, the benefit, the risk and the instrument's consistency with sharia, but the analysis does

²² Dewan Syariah Nasional–Majelis Ulama Indonesia [National Sharia Board–Indonesian Council of Ulama], Fatwa No 116/DSN-MUI/IX/2017 on Uang Elektronik Syariah [Sharia Electronic Money] (2017).

²³ Dewan Syariah Nasional–Majelis Ulama Indonesia [National Sharia Board–Indonesian Council of Ulama], Fatwa No 117/DSN-MUI/II/2018 on Layanan Pembiayaan Berbasis Teknologi Informasi Berdasarkan Prinsip Syariah [Information-Technology-Based Financing Services Based on Sharia Principles] (2018).

²⁴ Hidayati et al, *supra* note 5.

not make a product lawful or ready for the market. A new product still needs a thorough sharia review and must follow the procedure for issuing a fatwa and the applicable regulations.

Institutional Limits: Fatwa Authority and Positive Law

The methods are tools of reasoning for jurists; they do not confer authority. In Indonesia the authority to issue a fatwa on sharia financial products lies with the DSN-MUI, and the binding rules for institutions come from legislation and regulation. Fatwas and statutes give the guidelines for sharia products and services. The methods can help academic study to identify new problems, analyse the character of a contract and weigh the benefit and risk of an innovation, but they do not replace the competent institutions. A product without a specific fatwa still requires sharia study and a check of the relevant regulation before it is applied.

This has three practical implications for consumer protection and governance. First, the benefit of financial inclusion and efficiency must be weighed against risks such as loss, misuse of information and unclear responsibility; a benefit assessment that ignores these is incomplete. Second, an innovation cannot be judged by the profit or convenience it yields alone. The clarity of the contract, the distribution of risk, the effect on the parties and consistency with the law all count. Third, because benefit is the most elastic of the four grounds, it needs the strongest discipline: its use should be stated openly in the reasons of a fatwa, together with the conditions it satisfied.

Comparison with Earlier Research

The findings agree with Fateh's observation that benefit and the objectives of sharia run through DSN-MUI fatwas and that the presumption of permissibility is the rule most often applied.²⁵ This article adds an interpretation: the presumption is the practical form of *istishab* in transactions, which explains why it dominates. They also agree with Mubarak and Mahfudz that the board favours benefit and practical solutions over the choice of the strongest evidence;²⁶ the cautions drawn here on benefit follow from that observation, because a selective method that prizes practical solutions is exactly the one that needs explicit limits. Hidayati and others reach a similar view on digital finance and recommend turning the fatwas into regulation,²⁷ a step that would answer the institutional concern raised above. The difference lies in the object of study. Those studies analyse what the board did; this

²⁵ Fateh, *supra* note 3.

²⁶ Mubarak & Mahfudz, *supra* note 4.

²⁷ Hidayati et al, *supra* note 5.

article analyses what each method can and cannot properly do, and shows that of the four only *maslahah* (and the presumption within *istishab*) is visibly present in the fatwas considered. Ali and others supply empirical support for the benefit of productive zakat but not for the legal method.²⁸ The article therefore contributes a statement of conditions and limits that is absent from the descriptive literature, and it identifies where evidence is lacking, above all for *'urf* and *istihsan*.

Conclusion

The four methods examined remain relevant to Islamic economic law because modern economic activity keeps producing questions that the primary sources do not regulate in detail. They are aids to reasoning and do not replace the Qur'an and the Sunnah. Each has a distinct function: *istihsan* selects the more suitable ruling for sound sharia reasons, *istishab* keeps legal certainty until a change is proved, *maslahah mursalah* weighs real public benefit, and *'urf* accommodates customs that do not conflict with sharia. Their use is not free, because each has its own conditions and none may contradict a text.

In application, the methods can support the development of sharia banking, digital financial services, investment instruments and productive zakat, as the examples of *istishna'* financing, productive zakat under Law No 23 of 2011 and the fatwas on electronic money and technology-based financing show. The link between a method and a fatwa is, however, an analytical reconstruction, and the fatwas examined name only benefit openly. Nor does an analysis by these methods make a product lawful, since the authority to issue a fatwa remains with the competent institution and the product must comply with legislation.

Three recommendations follow. The DSN-MUI should state in the reasons of its fatwas which method of reasoning it relied on and which conditions it found satisfied, so that benefit and custom can be checked and not merely asserted. Legislators and regulators should consider incorporating the fatwas on digital finance into regulation, as earlier research also suggests. Researchers should test the use of *'urf* and *istihsan* in fatwa deliberations with primary records and interviews. The study is limited to documentary sources, to a small number of fatwas and statutes, and to a conceptual reading; it did not examine the deliberative records of the DSN-MUI or the latest consolidated texts of the statutes, which further research should do.

²⁸ Ali, Amalia & El Ayyubi, *supra* note 20.

Ethics and Data Availability

This normative legal research did not involve human participants or personal data, so ethical approval was not required. All legal materials used are publicly available.

Use of Generative AI

Generative AI was used only to improve the language of this article (grammar, clarity and style). The authors reviewed the output and are responsible for the content of the article.

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