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## Role of Ijma in Legitimizing and Validating Sharia Banking Practices in Indonesia

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### Abstract

*This study analyzes the legal position of ijma' of ulama as a source of Islamic law and its role in legitimizing Islamic banking practices within the Indonesian legal system. The purpose of this research is to examine how ijma', as manifested through fatwas issued by the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), functions as a normative reference that supports the implementation of Islamic banking in Indonesia. This research employs a normative juridical method with a statutory and conceptual approach, utilizing primary legal materials such as Law No. 21 of 2008 on Islamic Banking, DSN-MUI fatwas, and relevant regulations, as well as secondary legal literature. The findings indicate that ijma' does not operate as a direct source of state law; however, it gains normative and functional binding force through its recognition and incorporation into positive law. DSN-MUI fatwas serve as an intermediary mechanism that bridges Islamic legal norms and national banking regulations, thereby ensuring legal certainty and compliance with Sharia principles. Consequently, ijma' plays a strategic role in harmonizing Islamic law and national law in the regulation and practice of Islamic banking in Indonesia.*

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**Keyword :**

Ijma' Ulama, Islamic Law,  
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## Introduction

The development of Islamic banking in Indonesia has shown significant progress over the past few decades. The presence of Islamic banks is positioned as an alternative financial system that strives to implement Islamic principles, such as justice, honesty, and balance in economic transactions. This system explicitly rejects practices like *riba* (usury), *gharar* (uncertainty), and *maisir* (speculation), which are deemed contrary to Shariah values. Thus, Islamic banking not only functions as an economic institution but also serves as an instrument to realize a financial system grounded in Islamic morals and ethics.

Nevertheless, the legitimacy of Islamic banking in practice continues to spark controversy. Fiqh experts like Muhammad Akram Khan criticize *murabahah* contracts as legal ruses (*hīlah*) due to fixed margin additions that resemble conventional interest, while scholars such as Sheikh Muhammad Taqi Usmani condemn *ijarah muntahiyah bittamleek* for failing to reflect genuine ownership and instead merely modifying standard leasing. Muslim communities often question whether *wakalah* or *mudharabah* schemes are free from *gharar*, given restrictions on fund withdrawals and hidden fees that disadvantage customers and violate Shariah transparency.

This controversy reveals critical issues regarding legal certainty and the legitimacy of Islamic banking products, particularly the perceived superficiality of the Shariah Supervisory Board (DPS) independence and the weak binding force of DSN-MUI fatwas. Therefore, a robust, authoritative, and accountable Islamic legal foundation is needed—such as modern scholarly consensus (*ijma'*) or a reinterpretation of *maqasid al-Shariah*—to ensure banking operations remain aligned with Islam both normatively and applicatively.

In the context of Islamic law, *ijma'* plays a strategic role as the consensus of scholars after the death of the Prophet Muhammad SAW on a legal ruling. *Ijma'* is one of the sources of Islamic law alongside the Qur'an, hadith, and *qiyas*, functioning to provide legal legitimacy for new issues not explicitly regulated in the *nash* (primary texts). Through *ijma'*, scholars establish rulings on contemporary phenomena, including modern economic and financial practices like Islamic banking.

In Indonesia, the implementation of scholarly *ijma'* is embodied through the National Shariah Board–Indonesian Ulema Council (DSN-MUI), which has the authority to

issue fatwas on the Shariah compliance of Islamic banking products and activities. These DSN-MUI fatwas serve not only as religious guidelines but also carry significant legal implications, as they are referenced normatively by state authorities such as the Financial Services Authority (OJK) and Bank Indonesia in formulating regulations and overseeing Shariah financial institutions.

Consequently, when scholarly *ijma'* formulated in DSN-MUI fatwas is adopted as a basis in the national legal system, *ijma'* transcends mere moral-religious status and gains normative force that directly impacts legal certainty, institutional legitimacy, and legal protection for actors and users of Islamic banking services. Therefore, studying the role of *ijma'* is essential to assess the extent to which this religious authority contributes to the validity and legitimacy of Islamic banking within the framework of Islamic law and the national legal system.

## Literature Review / Theoretical Framework

This study is grounded in **Islamic legal theory (uṣūl al-fiqh)** and **fiqh al-mu'āmalāt** as the normative foundation of Islamic banking practices. Central to this framework is the concept of **ijmā'**, understood as the collective consensus of qualified Muslim jurists on legal issues not explicitly regulated in the Qur'an and Sunnah. In classical Islamic jurisprudence, *ijmā'* functions as a binding source of law that ensures doctrinal consistency and legal certainty. In the contemporary context, *ijmā'* is operationalized through **collective ijtihād (ijtihād jamā'i)**, particularly within institutional structures such as the National Sharia Council of the Indonesian Ulema Council (DSN-MUI), which formulates authoritative legal guidance for Islamic financial activities.

The principles of **fiqh al-mu'āmalāt**, including the prohibition of *ribā* (usury), *gharar* (excessive uncertainty), and *maisir* (speculation), provide the substantive criteria for assessing the validity of Islamic banking products. Contracts such as *murābahah*, *muḍārabah*, *mushārah*, and *ijārah* represent contemporary applications of classical legal doctrines adapted to modern financial needs. This adaptation is guided by the framework of **maqāṣid al-sharī'ah**, particularly the protection of wealth, the promotion of justice, and the realization of public interest (*maṣlaḥah*). Through this lens, Islamic banking is not merely a technical financial system but a normative economic order rooted in ethical and legal accountability.

From a legal-theoretical perspective, this study employs several complementary frameworks to explain the legitimacy of Sharia banking. The **theory of Islamic legal sources** positions *ijmā'* as a valid and authoritative basis for collective legal reasoning, while **maṣlaḥah theory** legitimizes financial innovation that serves societal welfare without contradicting Sharia principles. In addition, **legal positivization theory** explains the transformation of religious norms into binding state law, as reflected in Law No. 21 of 2008 on Islamic Banking, which formally recognizes DSN-MUI fatwas as normative references. This process illustrates the institutionalization of Islamic legal authority within Indonesia's national legal system.

Despite extensive scholarship on Islamic banking regulation and Sharia governance, existing studies often treat *ijmā'* as a procedural outcome rather than a substantive doctrine of Islamic jurisprudence, and rarely integrate classical legal theory with national legal frameworks. This study addresses that gap by conceptualizing **ijmā' ulama as an integrative legal mechanism** that bridges classical *fiqh*, contemporary financial

practices, and state regulation. By positioning *ijmā'* as both a theological authority and a regulatory foundation, this research offers a holistic explanation of the legitimacy and validity of Sharia banking practices in Indonesia.

## Research Methodology

This research adopts normative legal research, focusing on the examination of legal norms, principles, and doctrines that regulate and shape Islamic banking practices. The use of this method is considered appropriate because the study seeks to analyze the legitimacy and legal validity of Islamic banking operations through the concept of *ijmā'* of ulama, viewed within the framework of Islamic law and Indonesian positive law. Consequently, the research does not employ empirical or field-based data, but instead relies on a systematic and comprehensive analysis of authoritative legal materials relevant to the research issue.

To achieve this objective, the study applies a statute approach, conceptual approach, and doctrinal approach. The statute approach is utilized to examine statutory regulations governing Islamic banking in Indonesia, particularly Law Number 21 of 2008 on Islamic Banking and related regulations issued by the Financial Services Authority (OJK) and Bank Indonesia. The conceptual approach is employed to explore and clarify the legal meaning and theoretical foundations of *ijmā'* as a source of Islamic law, drawing upon Islamic legal doctrines, including *uṣūl al-fiqh*. In addition, the doctrinal approach is used to analyze DSN-MUI fatwas as authoritative legal opinions derived from collective *ijtihād*, which function as a normative basis for the implementation of Islamic banking products and practices in Indonesia.

## Results and Discussion

### A. The Position of *Ijma'* Ulama in Islamic Law

*Ijma'* (إجماع) literally means agreement. In *usul fiqh*, *ijma'* is positioned as the third source of Islamic law after the Qur'an and Hadith. Simply put, *ijma'* means meeting or gathering. In the context of Islamic law, *ijma'* ulama is a meeting or consultation of scholars who are experts in religious knowledge and Islamic law (called *mujtahid*) to discuss legal issues that are still unclear or have no provisions in the Qur'an and Hadith. This meeting aims to find appropriate legal solutions in accordance with Islamic principles. Thus, *ijma'* is not just an ordinary meeting, but a collective process full of scientific consideration (*Ijma' Ulama*, n.d.). The existence of *ijma'* ulama is the answer to the challenges of an ever-

evolving era, where new issues in the fields of economics, technology, bioethics, and social society require in-depth study from a sharia perspective involving various disciplines.

The urgency of *ijma'* ulama is even more apparent in this modern era, given that the complexity of the problems faced by Muslims cannot be solved solely by the individual approach of a *mujtahid*. The collective approach through *ijma'* allows for scientific synergy from various fields of expertise, resulting in more comprehensive and contextual legal decisions. According to Hassan, collective *ijtiḥād* is a necessity in dealing with modern issues that require a multidisciplinary perspective, because the complexity of contemporary issues requires the involvement of various experts from various fields of

science to produce fatwas that are applicable and relevant (Rahim et al., 2025). In this context, ijma' ulama functions not only as a forum for discussion, but also as a mechanism for legal decision-making that has strong legitimacy among the people. Ijma' is based on several strong sharia principles, including:

<b>Consultation (Shura).</b>	<b>Ijma' (Consensus)</b>	<b>The Role of Mujtahid</b>
The Qur'an strongly encourages the principle of deliberation in making important decisions. For example, Surah Asy-Syura verse 38 states that believers are those who deliberate in their affairs. This is the basis for the importance of deliberation among scholars in making legal decisions that apply to Muslims.	Ijma' is the agreement of scholars of a generation on a legal issue. Ijma' is a process to reach consensus. In ushul fiqh, ijma' is the third source of Islamic law after the Qur'an and Hadith.	Mujtahids are scholars who have the ability to perform ijtihad (in-depth legal reasoning). They have the ability and knowledge to interpret legal source texts and apply them in accordance with the context of the times. Ijma' brings these mujtahids together to seek joint legal solutions.

In the hierarchy of Islamic legal sources, ijma' holds a high position, namely as hujjah (evidence) after the Qur'an, Hadith, and ijma'. The following is an explanation of its position:

- 1) As a Strong Legal Argument: Ijma' is considered a collective instrument that has legal force and can be used as a guideline for Muslims. Decisions resulting from ijma' are usually binding and must be followed by the community.
- 2) Filling Legal Gaps (Furu'iyat): In cases where there are new issues or cases that are not clearly regulated in the nash (text of the Qur'an and Hadith), ijma' helps formulate new laws that are in accordance with Islamic principles.
- 3) Maintaining Unity Among the Ummah: With ijma', it is hoped that an agreement will emerge that can prevent divisions among the ummah due to differing opinions among scholars.
- 4) A Dynamic Instrument: As the times change and bring new issues, ijma' becomes an important mechanism for keeping Islamic law alive and relevant to the current social context.

In Indonesia, ijma' among scholars is an important tradition that is routinely held to discuss Islamic legal issues relevant to the national and global contexts. Ijma' decisions are often related to the fatwas of the Indonesian Ulema Council (MUI), which serve as guidelines for Muslims in Indonesia. Historically, ijma' ulama has also played an important role in resolving various issues faced by Muslims and maintaining social harmony. For example, discussions on the halal-haram status of a product, Islamic economic law, and social issues such as religious tolerance. Therefore, ijma' ulama is not a random process, but is carried out in a scientific and responsible manner. The process includes:

- 1) Gathering of Scholars: Mujtahids who have in-depth knowledge of the Qur'an, Hadith, and the science of Ushul Fiqh are gathered.
- 2) In-depth Discussion: The legal issues raised are discussed in detail with arguments based on Islamic sources.

- 3) Deliberation: After considering various opinions and arguments, the scholars deliberate to reach a consensus.
- 4) Consensus (Ijma'), If consensus is reached, a legal decision called ijma' is produced. This decision then becomes a guideline for Muslims.
- 5) Fatwa or Decision, The results of ijma' are usually expressed in the form of a fatwa or official statement that can be used as a reference.

Ijma' ulama is a collective mechanism that has a very important position in Islamic law. Based on sharia consultation and consensus, ijma' is a source of law after the Qur'an, Hadith, and ijma'. Through ijma', knowledgeable and qualified scholars work together to overcome new legal issues so that Islamic law remains relevant and applicable in the lives of the ummah. The tradition of ijma' is very effective in maintaining unity, strengthening the authority of Islamic law, and responding to the challenges of the times.

In the hierarchy of sources of Islamic law, ijma' scholars occupy a position after the Qur'an, Sunnah, and ijma'. The fundamental difference between ijma' and ijma' needs to be clearly understood in order to know the legal force of each. Ijma' in classical *usul fiqh* terminology is defined as the agreement of all mujtahids at a certain time regarding a particular Sharia law, which has *qath'i* (definite) legal force and cannot be refuted. Meanwhile, *ijma' ulama* refers to the agreement of the majority of scholars or certain fatwa institutions that have authority, so that its legal force is *zanni* (strong presumption) and is still open to review if stronger arguments or evidence are found (Hanafi et al., 2023).

The power of ijma' decisions has a very special position in the structure of Islamic law. In the view of the majority of scholars, valid ijma' is binding and cannot be contradicted. The agreement of the mujtahids in ijma' demonstrates the existence of collective legal authority based on knowledge, justice, and sharia responsibility. Imam Al-Ghazali in *Al-Mustashfa (Al-Mustashfa Jilid 1, n.d.-a)* emphasizes that anyone who opposes the results of ijma' has departed from the principle of obedience to the sharia, because ijma' is a form of agreement among the ummah that cannot possibly be united in misguidance. This opinion is reinforced by a hadith of the Prophet Muhammad SAW narrated by Ibn Majah: "My ummah will not agree on misguidance." This hadith is the theological basis that ijma' has legal force derived from divine guidance to preserve the purity of Islamic law from deviation.

In practice, the power of ijma' is divided into two levels, namely *ijma' qath'i* and *ijma' zanni*. *Ijma' qath'i* is definite (Esa Prasastia Amnesti et al., 2022) because it is agreed upon absolutely by all mujtahids at a certain time without any differences of opinion. Examples of this are ijma' regarding the obligation to pray five times a day and the prohibition of usury. This type of ijma' is absolute and cannot be challenged. Meanwhile, *ijma' zanni* is the agreement of the majority of scholars on an issue that is still subject to *ijtihad* or has uncertain arguments. *Ijma' zanni* is relative and open to review if stronger arguments are found in the future. Nevertheless, *ijma' zanni* still has recognized legal force, because it is born of deliberation and collective *ijtihad* that considers the interests of the people.

In the modern context, *ijma' ulama* carried out through official institutions such as the Indonesian Ulema Council (MUI) or *Majma' al-Fiqh al-Islami* (Jamaa, 2018) has very strong moral, social, and religious power. The decisions made are not only based on religious texts, but also take into account scientific developments and needs society. This makes ijma' not only a source of law, but also a social instrument that maintains unity of

understanding among Muslims. Thus, the power of ijma' decisions lies in their scientific legitimacy, collective agreement, and the benefits they produce. Ijma' ensures that Islamic law remains relevant, contextual, and in line with the main objectives of sharia (maqashid al-sharia), namely to protect religion, life, intellect, lineage, and property.

## **B. The Legitimacy of Islamic Banking in the Perspective of Ijma**

### **1) Islamic Banking Is the Result of Contemporary Ijtihad to Address Modern Economic Needs**

Islamic banking can be said to be the result of a process of contemporary ijthad carried out by Islamic scholars and economic experts to respond to the challenges of a complex modern financial system. In Islamic legal epistemology, ijthad functions as a dynamic mechanism in responding to new issues that are not explicitly found in the texts of the Qur'an and Hadith. Al-Ghazali (*Al-Mustashfa Jilid 1*, n.d.-b) defines ijthad as the maximum effort of a mujtahid to find Sharia law in matters that do not have definite provisions in the sacred texts. This principle shows that Islamic law is elastic and adaptive (Ahmad, 1992) to the times. Yusuf al-Qaradawi then emphasized the importance of al-ijthad al-mu'āshir (modern ijthad) in responding to global economic phenomena, including banking, capital markets, and financial instruments born of the modern capitalist system.

The emergence of Islamic banking cannot be separated from the moral crisis and social inequality caused by the dominance of the interest-based (riba) financial system. The conventional economic system, which is oriented towards profit without considering ethical values, has led to economic exploitation and social injustice. Islamic economists such as M. Umer Chapra argue that the root of the global economic crisis lies in the absence of a moral dimension in the capitalist system. It is in this context that Islamic banking emerged as a result of ijthad to build a financial system that is fair, ethical, and in line with maqāsid al-syarī'ah, namely maintaining justice, benefit, and social balance.

Contemporary ijthad in the field of Islamic banking can be seen in three main forms. First, ijthad on classical contracts, namely the reinterpretation of muamalah concepts such as mudharabah, murabahah, musharakah, and ijarah (*Bank Syariah*, n.d.-b) to be used as the operational basis for modern financial institutions. Second, institutional ijthad, namely the formation of new structures such as the National Sharia Council (DSN-MUI) and the Sharia Supervisory Board (DPS) which play a role in maintaining sharia validity in banking institutions. Third, regulatory ijthad, in the form of integrating Sharia principles into the national legal system through Law Number 21 of 2008 concerning Sharia Banking. All forms of ijthad show that Islamic law is capable of transforming from normative principles into an operational and modern economic system.

In addition, Islamic banking gained legitimacy through ijma' (consensus) based on the agreement of Islamic scholars worldwide on the validity of the Islamic financial system. In 1985, the Majma' al-Fiqh al-Islami (OIC) in its session in Jeddah (*Full Text of "Resolutions-and-Recommendations-of-the-Council-of-the-Islamic-Fiqh-Academy,"* n.d.) stipulated that the Islamic financial system is a valid alternative to the interest-based system, which is prohibited by Sharia. International institutions such as the Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) (*Latest News*, n.d.) then reinforced this legitimacy by establishing global Sharia standards for Islamic financial institutions. This collective agreement represents a form of modern ijma' sukuti, whereby the silence of the scholars regarding Islamic banking practices is considered a sign of collective approval and acceptance of the law.

As a result of contemporary *ijtihad*, Islamic banks not only serve as financial institutions, but also as moral instruments for building a just economic order. Through the principles of profit (, 2014) sharing, prohibition of usury, and social welfare orientation, Islamic banks offer a system that is not only economically efficient but also ethically sustainable. Amidst the challenges of globalization and economic capitalization, Islamic banking proves that Islamic values remain relevant in responding to modern economic needs without losing their spirit of justice and spirituality. Thus, the existence of Islamic banking is concrete proof that Islamic law is capable of adapting to the dynamics of the times through collective *ijtihad* that is rational, contextual, and based on divine values.

## **2) Sharia Banking Products (Murabahah, Mudharabah, Musyarakah, Ijarah Contracts) Are Validated Through Fatwas Issued by the DSN-MUI, Which Are the Result of Collective Deliberations by Islamic Scholars**

The existence of Islamic banking products such as *murabahah*, *mudharabah*, *musyarakah*, and *ijarah* cannot be separated from the role of the National Sharia Council - Indonesian Ulema Council (DSN-MUI) as an authoritative institution that functions to formulate sharia legal guidelines in modern economic practice. The DSN-MUI is the main instrument that ensures that every financial product and service developed by Islamic banks remains based on sharia principles and avoids elements of *riba* (usury), *gharar* (uncertainty), and *maisir* (speculation). Thus, DSN-MUI (*Fatwa DSN MUI*, n.d.) not only acts as a fatwa institution, but also as a manifestation of *ijtihad jama'i* (collective *ijtihad*) which embodies the agreement of scholars across fields in responding to contemporary economic needs.

In terms of its institutional structure (Radliyah et al., 2018), DSN-MUI was formed in 1999 based on MUI Leadership Council Decree Number Kep-754/MUI/II/1999. The existence of DSN is a response to the need for an institution capable of bridging the gap between classical *fiqh muamalah* and modern financial practices. The DSN-MUI's working mechanism is based on collective deliberation, whereby each fatwa issued is the result of in-depth discussions between scholars, economists, regulators, and financial practitioners. This decision-making process reflects the spirit of *ijtihad jama'i*, as explained by Wahbah al-Zuhaili, that collective *ijtihad* is the ideal form of Islamic legal reform in the modern era, because it involves many experts and avoids individual subjectivity.

The fatwas issued by the DSN-MUI serve as sharia legal legitimacy for all products and activities of sharia financial institutions. Key products such as *murabahah* (sale and purchase with profit margin), *mudharabah* (profit sharing between capital owners and managers), *musyarakah* (capital cooperation), and *ijarah* (operating lease) are all based on the legal basis of the DSN-MUI fatwa issued in 2000. These fatwas serve as the legal and normative basis for the Islamic banking system in Indonesia, ensuring that every transaction is carried out within a valid Sharia framework. For example, DSN-MUI Fatwa No. 04/DSN-MUI/IV/2000 on *Murabahah* confirms that buying and selling with a margin is permissible as long as it is transparent and mutually agreed upon, replacing the prohibited interest system. Similarly, Fatwa No. 07/DSN-MUI/IV/2000 on *Mudharabah* forms the basis for the profit-sharing system that is now a key feature of Islamic banking.



The authority of DSN-MUI fatwas is not limited to the moral realm, but has been recognized as part of the national legal system. This is confirmed in Article 26 paragraph (2) of Law No. 21 of 2008 on Islamic Banking, which states that every Islamic banking product and service must be based on DSN-MUI fatwas. This means that DSN-MUI fatwas have acquired normative power and serve as a bridge between normative sharia and positive state regulations. Through this mechanism, the state recognizes religious authority as part of national economic governance, demonstrating the harmonization between the dimensions of Islamic law and the modern public legal system.

Furthermore, the role of the DSN-MUI also reflects a contemporary form of *ijma'*, namely the agreement of scholars on the application of new laws in a modern context. Yusuf al-Qaradawi (*Min Fiqh Al-Dawlah Fi al-Islam*, n.d.) emphasizes that *ijma'* in the contemporary era is no longer limited to meetings of classical fuqaha but can be realized through collective institutions such as national fatwa councils that bring together Sharia and economic experts. Thus, the results of the DSN-MUI deliberations are not merely administrative fatwas but also reflect a form of *jama'i ijma'* at the national level, which serves as the theological basis for the legitimacy of all Islamic banking activities.

The DSN-MUI fatwa serves as a form of applied *ijtihad* that converts sharia values into a modern economic system. It not only functions to avoid violations of Islamic law but also facilitates economic innovation that is fair and ethical. Through this role, the DSN-MUI represents the successful integration of religion, science, and public policy. Every Islamic banking product produced and approved through a DSN-MUI fatwa is the concrete result of collaboration between scholars and academics who combine normative texts (*nash*) with modern socio-economic realities (*waqi'*). Thus, the validation of Islamic banking products through DSN-MUI is not only a form of sharia supervision, but also a symbol of Islamic legal legitimacy that is alive and adaptive to the challenges of the times.

### **3) *Ijma'* Serves as A Sharia Filter So That the Operations of Islamic Banks Do Not Deviate from Islamic Principles**

In the context of Islamic law, *ijma* has a position as one of the sources of law after the Qur'an and Hadith. Terminologically, *ijma'* is defined as the agreement of mujtahids from among Muslims at a certain time on a particular law in a sharia matter. In the Islamic financial system, *ijma'* plays an important role as a *sharia filter* — that is, a collective supervisory mechanism of scholars to ensure that every form of economic innovation, including Islamic banking practices, remains within the corridor of sharia. This concept emphasizes that the legitimacy of an economic practice in Islam is not only determined by formal legal aspects, but also by the consensus of scholars on the validity of its principles and mechanisms.

The function of *ijma'* as a sharia filter is evident in the process of establishing operational standards for Islamic financial institutions. Every banking product and instrument, such as *murabahah*, *mudharabah*, *ijarah*, and *wakalah*, is first reviewed and approved by international and national fiqh institutions composed of mujtahid scholars. One of the most influential institutions is the Islamic Fiqh Academy under the Organization of the Islamic Conference (OIC), which at its meeting in Jeddah in 1985 (*Islamic Fiqh Academy (1988). Resolutions and Recommendations of the Council of Islamic, Fiqh Academy 1985*, n.d.) stipulated that the Islamic banking system is a valid form of transaction as long as it is free from the elements of *riba*, *gharar*, and *maisir*. This

collective agreement is a form of modern *ijma' sukuti*, in which the widespread acceptance of Islamic banking by scholars is considered an indirect legal endorsement.

In Indonesia, the function of *ijma'* as a sharia filter is carried out institutionally by the National Sharia Council-Indonesian Ulema Council (DSN-MUI). DSN-MUI is tasked with issuing fatwas that serve as guidelines for the operations of all Islamic financial institutions. In this case, every Islamic bank is required to have a Sharia Supervisory Board (DPS) responsible for ensuring that the bank's business activities do not deviate from the principles Islam. DSN-MUI fatwas, such as Fatwa No. 04/DSN-MUI/IV/2000 (Agung, n.d.) on Murabahah and Fatwa No. 07/DSN-MUI/IV/2000 on Mudharabah, are the main references in the implementation of sharia banking contracts and products in Indonesia. This mechanism confirms that *ijma'* in its institutional form serves as the guardian of morality, law, and the validity of sharia in modern economic practice.

Furthermore, *ijma'* also serves as an epistemological guarantee of legitimacy that the Islamic banking system is not merely the result of economic innovation, but a continuation of the collectively recognized tradition of Islamic law. Wahbah al-Zuhaili (azman1204, n.d.) asserts that *ijma'* is the highest legal authority after the Qur'an and Sunnah, because it reflects the consensus of scholars that protects the ummah from legal misguidance. Thus, Islamic banking gains legitimacy not only from state regulations, but also from the consensus of the world's scholars, which functions as a normative barrier. *Ijma'* ensures that adaptation to the modern economic system does not sacrifice fundamental Islamic principles such as justice (*adl*), benefit (*maslahah*), and balance (*tawazun*).

Therefore, *ijma'* has a dual strategic function: as a legitimizing authority and controller of sharia principles. It ensures that Islamic banks do not get caught up in capitalist practices that contradict *maqashid al-syari'ah*. Through *ijma'* by scholars and Sharia institutions, Islamic banking operations remain free from practices of usury, *gharar*, and excessive speculation. In other words, *ijma'* functions as a "moral and legal compass" for the Islamic financial system, ensuring that the modernization of financial institutions remains in line with the values of *tawhid*, justice, and the welfare of the ummah.

### **C. The Legitimacy of Sharia Banking Practices in Indonesia**

*Ijma'* or collective agreement among scholars plays an important role as a source of legitimacy in the development of Islamic banking contracts in Indonesia. According to Sitompul et al., (Sitompul & Anggraini, n.d.) *ijma'* remains relevant to modern Islamic finance because through this process, scholars collectively produce moral and sharia guidelines which are then manifested in fatwas issued by institutions such as the National Sharia Council-MUI (DSN-MUI). In the context of *mu'amalah mālīyyah*, the concept of *ijma'* is placed as an argument after the Qur'an and Sunnah and has historically been applied to sales, leasing, and partnership contracts.

In Islamic banking practice, the results of the scholars' *ijma'* are then transformed into DSN-MUI fatwas, which serve as a reference for Islamic banks in developing products and contracts. For example, Nurjaman & Ayu found that "the position of the DSN-MUI fatwa (Nurjaman & Ayu, 2021) is one of the prerequisites in determining the validity of a product in a sharia financial institution... sharia banking products are in

accordance with Islamic law and the provisions of the fatwa become the legal umbrella". Thus, contracts such as *murābahah*, *mudhārabah*, and *ijarah* gain legitimacy because they are formulated and implemented based on fatwas sourced from *ijtimā' ulama*.

The presence of *ijma'* as a recognized source of Islamic law in the Indonesian legal system marks the harmonization between Islamic law and national law. In the context of Islamic banking, *ijma'* ulama plays a role in legitimizing the validity of financial principles and practices carried out in accordance with sharia. This is reflected in Law No. 21 of 2008 concerning Islamic Banking, which explicitly recognizes the fatwa of the National Sharia Council-Indonesian Ulema Council (DSN-MUI) as a normative reference for sharia products and contracts.

Article 26 paragraph (2) of Law No. 21 of 2008 states that: "The Sharia Supervisory Board shall ensure that the business activities of Islamic banks or Islamic business units are in accordance with the principles of sharia as determined by the National Sharia Council of the Indonesian Ulema Council." This provision indirectly indicates that the state grants legal authority to the results of the *ijma'* (consensus) of scholars through the DSN-MUI, because every fatwa issued by the DSN is based on the results of *ijtihad jama'i* (collective *ijtihad*) or *ijma'* (consensus) of contemporary scholars. Thus, even though *ijma'* is not a formal source of law in the national legal system, its substance and principles have been institutionalized through a fatwa mechanism that is recognized in legislation.

According to Alamsyah's research, the state's recognition of DSN-MUI in the Sharia Banking Law is a form of "positivization of Islamic law," which is the process of adopting Sharia norms derived from the Qur'an, Sunnah, and *ijma'* into the national legal system without losing their Sharia character. This shows the functional integration between the authority of the ulama and the authority of the state, where the ulama act as the source of values, while the state acts as the source of enforcement.

In addition, in the practice of resolving Islamic banking disputes, both in religious courts and through alternative dispute resolution (non-litigation), judges refer to DSN-MUI fatwas as the basis for assessing the validity of contracts. As explained by Al-Asyhar (Muhammad Khoiru Sa'i & Zaidah Nur Rosidah, 2024), judges in the Religious Court have the authority to examine Islamic economic disputes based on "DSN-MUI fatwas recognized in the Islamic Banking Law and which are a manifestation of the *ijma'* (consensus) of scholars in the field of contemporary *muamalah* (transactions). Thus, *ijma'* not only functions as a theological guideline, but has been transformed into a binding operational legal basis through the national legal system.

The role of DSN-MUI fatwas in the settlement of Islamic banking disputes is concrete evidence of the application of the results of the *ijma'* of scholars in national legal practice. After the enactment of Law No. 3 of 2006 and Law No. 50 of 2009 on Religious Courts, the authority of religious courts was expanded to include not only marriage and inheritance cases, but also sharia economic disputes. In this context, religious court judges are required to consider DSN-MUI fatwas as the basis for determining the validity of contracts and resolving Islamic financial disputes.

One example can be seen in the South Jakarta Religious Court Decision Number 1974/Pdt.G/2018/PA.JS, which dealt with a dispute between a customer and a sharia bank regarding the validity of a *murabahah* contract. In this case, the judge used the Fatwa DSN-MUI Number 04/DSN-MUI/IV/2000 (Homepage & Idrus Sekolah Tinggi Agama Islam Persatuan Islam Jakarta, 2025) concerning *Murabahah* as the main reference for assessing whether the implementation of the contract is in accordance with

sharia principles. The judge emphasized that the implementation of the murabahah contract must fulfill the elements of a valid sale and purchase, namely the existence of a cost price, an agreed profit margin, and ownership of the goods by the seller (bank) before they are resold to the customer. Because the bank never owned the goods being sold, the panel of judges declared the contract invalid under sharia law and ordered the contract to be restructured based on appropriate principles.

Research by Al-Asyhar explains that this practice demonstrates the transformation of the DSN-MUI fatwa (Homepage & Idrus Sekolah Tinggi Agama Islam Persatuan Islam Jakarta, 2025) into a jurisprudential legal norm that has binding force in judicial practice. The judge used the DSN-MUI fatwa as a normative reference that guides the legal interpretation of Sharia agreements, while also bridging the gap between positive legal norms and Sharia principles. This confirms that DSN-MUI fatwas function not only as religious guidelines, but also as substantive legal instruments in the religious court system.

A similar case also occurred in the Medan Religious Court Decision Number 657/Pdt.G/2019/PA.Mdn, in which a mudhārabah financing dispute between a sharia bank and a customer was decided based on DSN-MUI Fatwa Number 07/DSN-MUI/IV/2000 concerning Mudharabah Financing. In the decision, the panel of judges emphasized that the principle of profit and loss sharing is the main characteristic of a mudhārabah contract, so that any form of fixed profit guarantee from the bank is contrary to sharia principles. Thus, the court ordered that the settlement be made based on a fair ratio calculation in accordance with the DSN-MUI fatwa.

Based on the two cases above, it can be concluded that DSN-MUI fatwas have a dualistic function: (1) as a substantive reference in determining the validity of sharia contracts; and (2) as an interpretive guideline for judges in concretizing sharia principles into positive legal decisions. Research by Rahman and Yulianto also confirms that the application of DSN-MUI fatwas by religious courts is a form of *ijtihad qadha'i* (judicial *ijtihad*) based on the results of *ijma'* (consensus) among scholars and recognized by the national legal system.

#### **D. Implications of *ijma'* on Sharia Banking Regulations and Practices**

##### **1) *Ijma'* As A Bridge Between Classical Fiqh Texts and Modern Economic Realities**

*Ijma'* serves as a link that integrates classical fiqh principles with modern economic realities, particularly in the context of Islamic banking. In classical fiqh, financial muamalah rules such as sales contracts, partnerships, and leases have long existed, but *ijma'* allows for the application and adaptation of these laws to suit contemporary economic challenges and needs. Through the mechanism of *ijtihad jama'i*, scholars produce fatwas that form the basis of legal legitimacy for Islamic banking products, such as mudharabah, musyarakah, and murabahah. These fatwas ensure that Sharia principles are upheld in modern financial services, while providing flexibility for product innovation relevant to technological and market developments. Since 2000, DSN-MUI has issued dozens of fatwas, the majority of which are based on *ijma'*, which confirms the vital role of this mechanism in maintaining the relevance and validity of Islamic banking law in Indonesia.

## **2) It Provides Moral and Legal Legitimacy for Islamic Bankers and The Public Who Use Their Services**

The legitimacy provided by *ijma'* is crucial for Islamic banking practitioners and the community that uses Islamic financial services. Through fatwas issued by the National Sharia Council-Indonesian Ulema Council (DSN-MUI) in the *ijma'* forum, Islamic banks obtain strong legal recognition that their products and services are in accordance with Islamic principles. These fatwas guarantee that banking activities such as interest-free financing, profit sharing, and other contracts are carried out in accordance with Islamic law, thereby increasing the trust and confidence of industry players and service users.

The legitimacy of *ijma'* also has a moral dimension that strengthens the integrity and accountability of Islamic banks. With fatwas based on the consensus of scholars, Islamic banks have guidelines to avoid practices that contradict Islamic values, which in turn build harmonious and ethical relationships between banks and their customers. This makes it easier for the public to use financial services without doubting the halal status and fairness of the products offered.

This legitimacy forms the basis for the Sharia Supervisory Board (DPS) at every Islamic bank to carry out its supervisory functions effectively. The DPS uses fatwas from *ijma'* as the main guideline in ensuring that all bank processes and products consistently follow sharia rules. This also helps maintain the reputation and public trust in the Islamic banking system.

## **3) Promoting Harmony Between Islamic Law, National Law, and the Needs of The Global Financial Industry**

Harmonization between Islamic law, national law, and the needs of the global financial industry is a fundamental prerequisite for the legitimacy and sustainability of Sharia banking in Indonesia. Within this framework, *ijma'* ulama functions as a collective legal authority that translates Islamic normative values into applicable standards for modern financial practices. Through *ijma'*, Sharia principles such as the prohibition of *riba*, *gharar*, and *maysir* are adapted to contemporary banking operations without losing their doctrinal foundations. This harmonization enables Islamic banking to maintain religious authenticity while responding to the regulatory demands of both national and international financial systems (Chapra, 1992).

From the perspective of national law, Indonesia's constitutional system allows religious norms to be integrated into positive law within a pluralistic legal framework. Asshiddiqie (2010) argues that Indonesia is a religious-friendly constitutional state (*negara hukum yang berketuhanan*), in which religious values may be institutionalized through legislation as long as they are consistent with constitutional principles and the public interest. The enactment of Law No. 21 of 2008 on Sharia Banking reflects this constitutional accommodation, where Sharia principles—formulated through *ijma'* ulama and institutionalized in DSN-MUI fatwas—are incorporated into binding national regulations. This process demonstrates that harmonization does not create legal dualism but instead strengthens legal unity through normative integration.

The role of *ijma'* ulama becomes increasingly significant in mediating the interaction between Sharia norms and state regulation. DSN-MUI fatwas serve as authoritative expressions of *ijma'* that guide regulators such as Bank Indonesia and the Financial Services Authority (OJK) in formulating technical and supervisory regulations. According to Mahfud MD (2012), this interaction reflects the politics of law, wherein legal norms emerge from negotiations between religious values, social aspirations, and

state policy objectives. However, differences in jurisprudential interpretation (*ikhtilaf fiqh*) and structural distinctions between Sharia and conventional banking models remain key challenges, necessitating continuous dialogue among ulama, constitutional law scholars, regulators, and financial practitioners.

In this context, legal harmonization also functions as an enabling framework for innovation and global competitiveness in Islamic finance. By aligning *ijma'*-based Sharia principles with national legislation and international financial standards, Islamic banking institutions are encouraged to develop inclusive, adaptive, and sustainable financial products. This approach resonates with Rahardjo's (2009) conception of law as a tool of social engineering, where law should facilitate economic development and social justice rather than act as a rigid constraint. Ultimately, harmonization anchored in *ijma'* ulama strengthens regulatory certainty, enhances public trust, and positions Indonesian Sharia banking as a credible and competitive actor within the global financial industry.

#### **E. The Stages and Mechanisms that Must Be Followed in the Ijma Process According to MUI Guidelines**

*Ijma* at the MUI is a mechanism of agreement or consensus among scholars in determining fatwas based on Islamic teachings that refer to the Qur'an, Hadith, and the thoughts of previous scholars. This process is not merely a meeting, but rather a systematic series of stages so that the resulting decisions are able to address contemporary religious and social issues accurately and are legally valid under Sharia law. Therefore, MUI *ijma* is carried out through official procedures that have been regulated in the fatwa determination guidelines.

The initial stage begins with an in-depth assessment of the issue, in which the Fatwa Commission collects complete data and examines the background of the issue from various perspectives. This step is important to ensure that all relevant aspects are well understood, including the relevance of Sharia law and its social impact. Next, an assessment is conducted of the opinions of *fugaha* and existing fatwas as a basis for religious review. After the preliminary assessment stage, the Fatwa Commission involves expert members to compile analytical papers and formulate the issues scientifically. In this case, if the issue is clear in Islamic law, the fatwa can be issued immediately without further *ijtihad*. However, if there are differences of opinion among scholars from various schools of thought, the Fatwa Commission will engage in intensive discussions to reach a consensus.







If the differences cannot be resolved through ordinary discussion, then collective *ijtihad* is carried out by the members of the Commission by applying the appropriate *fiqh* method to find a legal solution. In situations where internal differences remain, the fatwa (Dinar et al., 2025) is still issued with the arguments for the differences included as material for consideration by the people in carefully implementing the fatwa.

The final stage is the official issuance of the fatwa, which has undergone a process of consensus and comprehensive review by the MUI Leadership Council, and is then published for the general public. This MUI (Basyari, 2019) *ijma* process is an important instrument for producing fatwas that are not only normative, but also relevant to the

needs of the community and developments of the times, and based on the principles of *maslahat* and *maqashid syariah*.

## Conclusion

*Ijma'* plays a very important role as the main source of law that provides legitimacy for Islamic banking practices in Indonesia. Sharia banking products that are considered valid do not only depend on government regulations but are also greatly influenced by the consensus of scholars formed through the *ijma'* mechanism. *Ijma'* serves to ensure that the operations of Islamic banks remain in accordance with sharia principles while also being in line with applicable national laws. With *ijma'*, various fatwas issued by the National Sharia Council-Indonesian Ulema Council (DSN-MUI) become a strong legal basis for the development and implementation of Islamic banking, harmoniously and sustainably bridging classical Islamic law with modern economic demands.

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