

## Istihsān and The Dynamics of Islamic Economic Law: A Uṣūl Al-Fiqh Analysis of DSN MUI Fatwas

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### *Abstract*

*The growing complexity of contemporary Islamic economic practices has revealed the limitations of formal qiyās as the dominant mode of legal reasoning in Islamic economic fatwas. While existing studies have discussed istihsān primarily as a pragmatic or auxiliary tool in specific financial products, its methodological role within uṣūl al-fiqh remains insufficiently theorized. This article aims to examine istihsān as a structured methodological response to the limitations of formal qiyās in contemporary Islamic economic regulation, using selected fatwas issued by the Dewan Syariah Nasional–Majelis Ulama Indonesia (DSN–MUI) as a focused case study. Employing a qualitative normative legal research design grounded in uṣūl al-fiqh, this study analyzes DSN–MUI fatwas through systematic document analysis to identify patterns of legal reasoning and the interaction between qiyās and istihsān. The findings demonstrate that istihsān is employed both explicitly and implicitly as an internal corrective mechanism to mitigate legal rigidity, ensure socio-economic functionality, and preserve Sharia objectives. Moreover, the study shows that institutional fatwas function as instruments of legal dynamism by integrating classical jurisprudence with contemporary economic governance. This article contributes to Islamic economic law scholarship by repositioning istihsān as a central methodological framework that reshapes the epistemological orientation of uṣūl al-fiqh toward adaptive yet normatively grounded legal reasoning.*

**Keywords:** *Istihsān; Uṣūl al-Fiqh; Islamic Economic Law; DSN–MUI Fatwas; Legal Dynamism.*

### *Abstrak*

Semakin kompleksnya praktik ekonomi Islam kontemporer telah menyingkap keterbatasan qiyās formal sebagai mode penalaran hukum yang dominan dalam fatwa ekonomi Islam. Meskipun sejumlah kajian sebelumnya telah membahas istihsān terutama sebagai instrumen pragmatis atau pelengkap dalam produk keuangan tertentu,

peran metodologisnya dalam kerangka *uṣūl al-fiqh* masih belum terteoretisasi secara memadai. Artikel ini bertujuan untuk mengkaji *istihsān* sebagai respons metodologis yang terstruktur terhadap keterbatasan *qiyās* formal dalam regulasi ekonomi Islam kontemporer, dengan menggunakan fatwa-fatwa terpilih yang dikeluarkan oleh Dewan Syariah Nasional–Majelis Ulama Indonesia (DSN–MUI) sebagai studi kasus terfokus. Penelitian ini menggunakan desain penelitian hukum normatif kualitatif yang berlandaskan *uṣūl al-fiqh*, dengan menganalisis fatwa DSN–MUI melalui kajian dokumen secara sistematis guna mengidentifikasi pola penalaran hukum serta interaksi antara *qiyās* dan *istihsān*. Hasil penelitian menunjukkan bahwa *istihsān* digunakan baik secara eksplisit maupun implisit sebagai mekanisme korektif internal untuk mereduksi kekakuan hukum, menjamin fungsionalitas sosio-ekonomi, dan menjaga tujuan-tujuan syariah. Lebih jauh, studi ini memperlihatkan bahwa fatwa institusional berfungsi sebagai instrumen dinamisasi hukum dengan mengintegrasikan khazanah fikih klasik ke dalam tata kelola ekonomi kontemporer. Artikel ini berkontribusi pada khazanah hukum ekonomi Islam dengan memposisikan kembali *istihsān* sebagai kerangka metodologis sentral yang membentuk ulang orientasi epistemologis *uṣūl al-fiqh* menuju penalaran hukum yang adaptif sekaligus berlandaskan legitimasi normatif.

**Kata Kunci:** *Istihsān*; *Uṣūl al-Fiqh*; Hukum Ekonomi Islam; Fatwa DSN–MUI; Dinamika Hukum.

## INTRODUCTION

The growing complexity of contemporary Islamic economic practices has increasingly exposed the limitations of formal *qiyās* as the primary mode of legal reasoning in Islamic economic fatwas. Modern Islamic financial transactions are frequently structured through hybrid contractual arrangements, deferred obligations, and digitally mediated mechanisms that cannot be adequately addressed through strict analogical reasoning without producing legal rigidity or socio-economic inefficiency. In response to these challenges, Islamic legal institutions have increasingly employed *istihsān* (juristic preference) as a flexible methodological approach to accommodate practical economic needs when formal *qiyās* proves insufficient.<sup>1</sup> This pattern reflects a broader methodological dynamism within *uṣūl al-fiqh*, in which legal reasoning extends beyond analogical deduction to incorporate considerations of public interest (*maṣlahah*) and evolving socio-economic realities.<sup>2</sup> The

<sup>1</sup> Hasanudin, J Mubarok, and M.A.-F. Maulana, “Progressiveness of Islamic Economic Law in Indonesia: The *Murā‘at Al-‘Ilal Wa Al-Masālih* Approach,” *Samarah* 7, no. 2 (2023): 1267–92, <https://doi.org/10.22373/sjhk.v7i2.17601>; S G Mukri and P S Aliyeva, “Revitalization of *Istihsan Bi Al ’Urfi* in Sharia Financing: Fatwa Study 2010–2018,” *Journal of Islamic Economic Laws* 6, no. 1 (2023): 1–12, <https://doi.org/10.23917/jisel.v6i1.17436>.

<sup>2</sup> Ahmad Yani Anshori and Landy Trisna Abdurrahman, “History of the Development of *Mazhab*, *Fiqh* and *Uṣūl Al-Fiqh*: Reasoning Methodology in Islamic

growing reliance on *istihsān* is particularly evident in fatwas addressing contemporary and digital financial transactions, where adaptive legal reasoning becomes essential to maintain both normative legitimacy and practical operability.<sup>3</sup> Consequently, the use of *istihsān* in Islamic economic fatwas signifies an ongoing methodological transformation within *usūl al-fiqh*, positioning juristic preference as a crucial instrument for sustaining the relevance and theoretical development of contemporary Islamic Economic Law while remaining anchored to the foundational principles of Sharia.

Existing studies in Islamic economic law have extensively discussed the use of *istihsān* in responding to contemporary economic challenges, particularly within the context of Islamic financial fatwas. Several scholars highlight that *istihsān*, especially *istihsān bi al-‘urfī*, has been practically employed to accommodate modern financial needs and to enhance the adaptability of sharia-based financing products, including in institutional fatwas such as those issued by DSN-MUI.<sup>4</sup> Other studies emphasize that while *qiyās* remains a foundational method in Islamic legal reasoning, its formal application often encounters limitations when addressing complex and innovative economic transactions, thereby necessitating more flexible approaches.<sup>5</sup> In this regard, *istihsān* is

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Law,” *Samarah*, 2025, <https://doi.org/10.22373/sjhk.v9i1.25355>; N Khoiri, “Disclosing The Side Of Islamic Legal Methodology Out Of The Syafii Fiqh Mazhab On The Interpretation Of Muslim Scholars Constellation And The Dynamics Of Fiqh In Serdang Sultanate (1856-1946),” *Journal of Legal, Ethical and Regulatory Issues* 24, no. Special Issue 1 (2021): 1–14, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85113181559&partnerID=40&md5=4d6cbf728c7ec742fbcb470df01fac67>.

<sup>3</sup> A Bashori and W.N.H.W. Jusoh, “Epistemology of Fatwas on Digital Transaction in Indonesia,” *Jurnal Hukum Islam* 21, no. 2 (2023): 231–78, [https://doi.org/10.28918/jhi\\_v21i2\\_02](https://doi.org/10.28918/jhi_v21i2_02); A H Thahir, “Towards the Multidimensional Ushul Al-Fiqh: A Study of the Integration of Science in the Fatwa of Majelis Ulama Indonesia,” *Samarah* 8, no. 2 (2024): 687–705, <https://doi.org/10.22373/sjhk.v8i2.19686>.

<sup>4</sup> Mukri and Aliyeva, “Revitalization of Istihsan Bi Al ‘Urfi in Sharia Financing: Fatwa Study 2010-2018”; Diky Faqih Maulana and Abdul Rozak, “Istihsan as a Finding Method of Progressive Islamic Law in the Indust Rial Revolution Era 4.0,” *El-Mashlahah* 11, no. 2 (2021): 127–45, <https://doi.org/10.23971/elma.v11i2.2981>.

<sup>5</sup> N Nuraeni and M N Abdullah, “Qiyas Method of the National Sharia Board Fatwas and the Contemporary Islamic Economic Problems,” *Jurnal Hukum Islam* 22, no. 2 (2024): 281–312, <https://doi.org/10.28918/jhi.v22i2.02>; I Yanti, “Dari Idealisme Ke Pragmatisme: Pergeseran Paradigma Dalam Pengembangan Hukum Ekonomi Syariah Di Indonesia,” *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (2020): 191–210, <https://doi.org/10.24090/mnh.v14i2.3408>.

frequently portrayed as a pragmatic and progressive instrument that enables Islamic law to remain responsive to socio-economic transformation and market realities.<sup>6</sup> Nonetheless, much of the existing literature tends to focus on the functional or normative justification of *istihsān* in specific products or fatwas, or situates it alongside other adaptive methods such as *maṣlahah mursalah* and *taysīr manhajī*, without systematically examining *istihsān* as a coherent methodological response to the structural limitations of formal *qiyās*.<sup>7</sup> Moreover, the implications of this methodological shift for the theoretical development of Islamic Economic Law remain underexplored, as most studies stop short of articulating how the recurrent use of *istihsān* reshapes the epistemological framework of *uṣūl al-fiqh* in contemporary economic regulation.<sup>8</sup> This gap indicates the need for a more focused methodological analysis that situates *istihsān* not merely as a pragmatic tool, but as a key driver in the evolving theory of Islamic Economic Law.

Despite the growing reliance on *istihsān* in contemporary Islamic economic fatwas as a response to the practical limitations of formal *qiyās*, the methodological status and theoretical implications of this juristic preference remain insufficiently examined within Islamic Economic Law scholarship. Existing studies largely emphasize the functional, pragmatic, or normative justification of *istihsān* in specific financial products or institutional fatwas, while paying limited attention to its role as a coherent methodological response to the structural constraints of analogical reasoning in modern economic contexts. Moreover, the recurring use of *istihsān* in fatwas issued by authoritative bodies such as DSN-MUI has not been systematically analyzed in terms

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<sup>6</sup> Hasanudin, Mubarok, and Maulana, “Progressiveness of Islamic Economic Law in Indonesia: The Murā‘at Al-‘Ilal Wa Al-Masālih Approach”; Rozihan, “CONSTRUCTION OF PROSPERITY IN FUTURE ISLAMIC LEGAL THINKING IN A PROGRESSIVE LEGAL PERSPECTIVE,” *Revista de Gestao Social e Ambiental* 18, no. 2 (2024), <https://doi.org/10.24857/rsgsa.v18n2-105>.

<sup>7</sup> A Musadad et al., “The Role of The Taysir Manhaji Method in The Development of Islamic Economic Law in Indonesia Through DSN-MUI Fatwas,” *Journal of Islamic Economic Laws* 8, no. 1 (2025): 130–54, <https://doi.org/10.23917/jisel.v8i01.7607>; Y D Haq, H Muchtia, and Z A Mukhlis, “Bid’ah in Concept of Maslahah Mursalah and Istihsan According to Imam Asy-Syathibi,” *Juris: Jurnal Ilmiah Syariah* 20, no. 2 (2021): 225–37, <https://doi.org/10.31958/juris.v20i2.3352>.

<sup>8</sup> A Fakhrina and A Hamid, “Sacralizing the Market? The Role of DSN–MUI in the Legal-Economic Legitimacy of Islamic Banking in Indonesia,” *Ahkam: Jurnal Ilmu Syariah* 25, no. 1 (2025): 125–41, <https://doi.org/10.15408/ajis.v25i1.40879>.

of how it reflects a broader transformation within *uṣūl al-fiqh* or how it contributes to the theoretical development of Islamic Economic Law. This article therefore aims to examine the use of *istihsān* in Islamic economic fatwas as an expression of methodological dynamism within *uṣūl al-fiqh*, to analyze how juristic preference operates in addressing the limitations of formal *qiyās* in contemporary economic practices, and to assess its implications for the evolving theoretical framework of Islamic Economic Law, using selected DSN-MUI fatwas as a focused case study.

This study is significant because it advances the methodological understanding of Islamic Economic Law by repositioning *istihsān* from a merely pragmatic or auxiliary juristic device to a central analytical framework within contemporary *uṣūl al-fiqh*. Its urgency lies in the increasing reliance of Islamic economic regulation on fatwas to govern complex and rapidly evolving financial practices, where the continued application of formal *qiyās* alone risks legal rigidity and normative dissonance. By offering a systematic *uṣūl al-fiqh* analysis of selected DSN-MUI fatwas, this article contributes to the literature in two principal ways: first, it provides a conceptual clarification of how *istihsān* operates as a structured methodological response to the limitations of analogical reasoning in modern economic contexts; second, it demonstrates how the recurrent use of juristic preference reshapes the epistemological orientation of Islamic Economic Law toward greater adaptability without compromising foundational Sharia principles. The novelty of this study lies in its shift from product-based or normative evaluations of fatwas toward a methodological and theoretical assessment of *istihsān* as a driver of legal dynamism, thereby offering a new perspective on the evolving architecture of Islamic Economic Law.

## **LITERATUR Review**

### **Uṣūl al-Fiqh as a Methodological Framework for Contemporary Fatwa Reasoning**

*Uṣūl al-fiqh* in contemporary scholarship is increasingly understood not merely as a compilation of classical juristic rules, but as a comprehensive methodological framework that structures legal reasoning in Islamic economic law, particularly in the formulation of fatwas. This reconceptualization is driven by the growing complexity of modern socio-economic realities, which demand legal reasoning capable of moving beyond rigid textualism and purely formal analogical deduction. Within this framework, classical instruments such as *qiyās* and *istihsān* are no longer treated as isolated techniques, but as

interconnected methodological tools that operate within a purposive structure aimed at preserving justice, coherence, and normative legitimacy. Scholarly works emphasize that while *qiyyās* secures doctrinal continuity with established legal precedents, *istihsān* functions as an internal corrective that mitigates the rigidity of analogy when strict application risks undermining equity or social welfare, particularly in complex economic contexts.<sup>9</sup> This methodological flexibility is further reinforced through the integration of *ijmā'* and *maṣlāḥah* as epistemic considerations that ensure legal rulings remain normatively grounded while responsive to social realities.<sup>10</sup> Accordingly, *uṣūl al-fiqh* is best understood as a dynamic epistemological system that governs how legal reasoning is constructed, evaluated, and adapted, rather than as a static repository of juristic doctrines.

The methodological dynamism of *uṣūl al-fiqh* becomes particularly evident in contemporary fatwa reasoning, where classical legal methods are systematically integrated with purposive and context-sensitive approaches. Recent theoretical studies highlight the increasing role of *maqāṣid al-sharī'ah* as a methodological lens that guides the application and recalibration of secondary sources such as *qiyyās* and *istihsān*, especially in the domain of Islamic economic regulation.<sup>11</sup> In this configuration, *maqāṣid* do not function as an independent source of law, but as an evaluative framework that justifies methodological departures from strict analogy when necessary to preserve essential legal objectives. Institutional fatwas increasingly reflect this orientation by combining analogical reasoning, juristic preference, legal maxims (*qawā'id fiqhīyyah*), and purposive *ijtihād* to address unprecedented regulatory and economic challenges.<sup>12</sup> This theoretical development

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<sup>9</sup> Anshori and Abdurrahman, "History of the Development of Mažhab, Fiqh and Uṣūl Al-Fiqh: Reasoning Methodology in Islamic Law."

<sup>10</sup> A M Alkhan, M K Hassan, and A Alsaadi, "Rethinking Uṣūl Al-Fiqh in Islamic Finance: From Diversified Jurisprudential Schools to Unified Uṣūl?," *Arab Law Quarterly*, 2025, <https://doi.org/10.1163/15730255-bja10192>.

<sup>11</sup> Muhammad Nazir Alias et al., "The Position of Maqasid Al-Shariah within Islamic Legal Sources: A Comprehensive Analysis," *Samarah* 9, no. 2 (July 1, 2025): 937–64, <https://doi.org/10.22373/q4byre51>; R Beka, "Maqaṣid and the Renewal of Islamic Legal Theory in 'Abdullah Bin Bayyah's Discourse," *American Journal of Islam and Society* 38, no. 3–4 (2021): 103–45, <https://doi.org/10.35632/ajis.v38i3-4.2987>.

<sup>12</sup> J M Muslimin, R F Iskandar, and Y Fatma, "Islam and Medicine: A Study on The Fatwa of Indonesian Ulama Council on Vaccines," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 (2021): 85–106, <https://doi.org/10.29240/jhi.v6i1.2496>; M Sulthon, I

demonstrates that contemporary *uṣūl al-fiqh* operates as an adaptive methodological framework capable of maintaining doctrinal integrity while enabling legal responsiveness to evolving economic and institutional contexts. Consequently, this conceptualization provides a coherent theoretical foundation for analyzing fatwas as products of structured and disciplined legal reasoning, rather than as *ad hoc* or purely pragmatic decisions, and situates *uṣūl al-fiqh* as a central analytical lens in the study of methodological change within Islamic Economic Law.

### **The Qiyās Istihsān Dialectic in Contemporary Islamic Economic Reasoning**

*Qiyās* is consistently conceptualized in *uṣūl al-fiqh* literature as a foundational method of Islamic legal reasoning for deriving rulings on new economic issues in the absence of explicit textual evidence. By extending established rulings through the identification of a shared legal cause ('illat) between an original case (*asl*) and a new case (*far'*), *qiyās* ensures doctrinal continuity and methodological coherence within Islamic economic law. Its centrality is justified by its capacity to systematize legal reasoning and to extend classical norms to contemporary financial instruments, including *şukūk*, Islamic insurance, and sharia-compliant financing mechanisms. Methodological studies emphasize that the analytical structure of *qiyās*—comprising *asl*, *far'*, *ḥukm al-asl*, and 'illat—remains a core framework in contemporary Islamic finance jurisprudence.<sup>13</sup> However, the literature also recognizes that when applied rigidly to complex contractual arrangements, hybrid transactions, and digitally mediated economic practices, formal *qiyās* tends to generate legal formalism that constrains economic functionality and regulatory responsiveness. Accordingly, scholars conclude that while *qiyās* is indispensable, it cannot operate as a self-sufficient

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Syafi'i, and A G Nizami, "Contemporary Fiqh in Indonesia: The Dynamics of Istinbāt Al-Aḥkām at Ma'had Aly Salafiyah Shafi'iyah Sukorejo Situbondo," *Ahkam: Jurnal Ilmu Syariah* 24, no. 1 (2024): 119–34, <https://doi.org/10.15408/ajis.v24i1.32174>.

<sup>13</sup> M S Hidayatullah, "FORMULASI RECHTSVINDING DENGAN PENALARAN ANALOGIS DALAM EPISTEMOLOGI HUKUM ISLAM (Telaah Metodologis Qiyas Sebagai Ra'y Terhadap Mashādir Al-Aḥkām Asy-Syar'iyyah)," *Juris: Jurnal Ilmiah Syariah* 19, no. 2 (2020): 177–201, <https://doi.org/10.31958/juris.v19i2.2490>; M Iqbal, "A General View of *Qiyās*: A Dialectical Reading," in *Logic, Argumentation and Reasoning*, vol. 25, 2022, 1–12, [https://doi.org/10.1007/978-3-030-91676-3\\_1](https://doi.org/10.1007/978-3-030-91676-3_1); Nuraeni and Abdullah, "Qiyas Method of the National Sharia Board Fatwas and the Contemporary Islamic Economic Problems."

methodological instrument for addressing the structural complexity of modern Islamic economic transactions.

*Istihsān* is theorized in contemporary Islamic legal scholarship as an internal corrective mechanism designed to address the methodological limitations of strict analogical reasoning without undermining its normative authority. Rather than negating *qiyās*, *istihsān* permits juristic preference to depart from analogical outcomes when such outcomes conflict with substantive justice, public welfare, or the higher objectives of *Sharia*. The normative rationale for *istihsān* lies in its function as a mediating tool that preserves legal equity and socio-economic relevance while maintaining doctrinal integrity. Theoretical analyses situate *istihsān* within a *maqāṣid*-oriented framework, emphasizing its role as a regulator of *qiyās* that recalibrates legal reasoning in light of changing socio-economic realities.<sup>14</sup> Through this dialectical relationship, *istihsān* enhances the adaptive capacity of Islamic economic law without eroding its normative foundations. Consequently, the *qiyās*–*istihsān* dialectic is conceptualized in the literature as a methodological equilibrium that enables Islamic legal reasoning to negotiate between legal continuity and adaptive responsiveness in the context of contemporary economic transformation.

### **Legal Adaptability and Institutional Dynamism in Contemporary Islamic Economic Law**

Contemporary Islamic legal scholarship increasingly conceptualizes Islamic law as an adaptive and dynamic legal system capable of responding to evolving socio-economic realities, particularly in the field of economic regulation. This adaptability is grounded in the recognition that rigid formalism is insufficient to govern complex and institutionalized economic practices. As a result, modern fatwa institutions employ methodological flexibility to reconcile normative continuity with practical governance needs, positioning Islamic law not merely as a static doctrinal corpus but as a responsive regulatory framework. Recent studies emphasize the growing use of facilitative

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<sup>14</sup> A S A Bakar et al., “Adapting Digital Shift: Islamic Evolution in the Gig Economy Ecosystem,” in *Studies in Systems, Decision and Control*, vol. 598, 2025, 195–204, [https://doi.org/10.1007/978-3-031-91424-9\\_18](https://doi.org/10.1007/978-3-031-91424-9_18); Alias et al., “The Position of Maqasid Al-Shariah within Islamic Legal Sources: A Comprehensive Analysis”; I Kutluay, “The Scope of the Sunna in Shāfi’īs Thought Syste,” *Energy Education Science and Technology Part B: Social and Educational Studies* 4, no. 1 (2012): 501–10, <https://www.scopus.com/inward/record.uri?eid=2-s2.0-84861137102&partnerID=40&md5=d9418dcfd802f5ba6a6cf7d9b72e58a3>.

reasoning methods such as *taysīr manhajī*, which enable juristic interpretation to accommodate economic complexity while remaining anchored to the objectives of Sharia (*maqāṣid al-sharī‘ah*). Empirical analyses of institutional fatwas, particularly those issued by DSN–MUI, demonstrate that such methods are systematically applied to address contemporary financial practices without abandoning core legal principles.<sup>15</sup> These findings support the conclusion that methodological flexibility constitutes an intrinsic feature of Islamic legal reasoning in contemporary economic contexts rather than an exceptional deviation from classical jurisprudence.

Beyond methodological adaptability, the dynamism of Islamic economic law is further manifested through the institutionalization of *iftā‘* and the integration of fatwas into modern regulatory and legal systems. Contemporary literature documents a significant transformation in fatwa production, from individual juristic authority toward collective, institution-based decision-making, which enhances legal legitimacy, consistency, and regulatory coherence in complex economic environments. Institutional fatwas increasingly function as operative components of national legal frameworks, requiring harmonization with state regulations, engagement with technological developments, and responsiveness to scientific and socio-political factors, particularly in digital finance and emerging economic instruments.<sup>16</sup> This integration reconfigures the role of Islamic law from a purely normative system into a hybrid regulatory framework that interacts directly with modern governance structures. Consequently, Islamic law's adaptability should be understood not only as a matter of juristic methodology but also as an institutional and structural phenomenon that enables Islamic economic

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<sup>15</sup> Musadad et al., “The Role of The Taysir Manhaji Method in The Development of Islamic Economic Law in Indonesia Through DSN-MUI Fatwas.”

<sup>16</sup> E E Yakar, “The Diachronic Change of the Practice of Iftā‘: From Individual to Collective,” *Islamic Studies* 60, no. 4 (2021): 325–46, <https://doi.org/10.52541/isiri.v60i4.1246>; M Aseri et al., “Negotiating Authority and Knowledge: Religion, Science, and Politics in the Fatwa Transformations of the Indonesian Ulema Council,” *Journal of Islamic Law* 6, no. 2 (2025): 286–316, <https://doi.org/10.24260/jil.v6i2.4702>; I Z Asyiqin, “Islamic Economic Law in the Digital Age: Navigating Global Challenges and Legal Adaptations,” *Media Iuris* 8, no. 1 (2025): 95–112, <https://doi.org/10.20473/mi.v8i1.61800>; M Nasrudin et al., “From Nonbinding to Binding: Legal Authority Transformation of DSN–MUI Fatwas within the National Legal System,” *Jurnal Hukum Islam* 23, no. 2 (2025): 413–58, <https://doi.org/10.28918/jhi.v23i2.03>.

law to operate effectively within contemporary systems of economic governance.

## RESEARCH METHOD

This study employs a qualitative normative legal research design with a doctrinal and analytical approach grounded in *uṣūl al-fiqh*. The primary data consist of selected fatwas issued by the Dewan Syariah Nasional Majelis Ulama Indonesia (DSN–MUI) that explicitly or implicitly apply *istihsān* in regulating Islamic economic practices, particularly in contemporary and innovative financial transactions. These fatwas are selected purposively based on their relevance to issues of analogical limitation (*qiyās*) and methodological flexibility in Islamic economic law. Secondary data are drawn from scholarly books, peer-reviewed journal articles, and authoritative studies on *uṣūl al-fiqh*, Islamic legal methodology, and Islamic economic law to contextualize and support the analysis. Data collection is conducted through systematic document analysis, focusing on the structure of legal reasoning, the methodological justifications employed, and the interaction between *qiyās*, *istihsān*, and other supporting principles in the fatwa texts.

The data analysis is carried out through a qualitative interpretative method using *uṣūl al-fiqh* as the primary analytical framework. Fatwas are examined to identify patterns of methodological reasoning, particularly how *istihsān* operates as a response to the limitations of formal *qiyās* in complex economic contexts. The analysis proceeds in three stages: first, mapping the legal reasoning structure of the selected fatwas; second, examining the role of *istihsān* within the *qiyās–istihsān* dialectic; and third, assessing the broader methodological and theoretical implications of this reasoning for the development of Islamic Economic Law. To ensure analytical rigor, the study applies a comparative and reflective reading of fatwa texts against established *uṣūl al-fiqh* principles, allowing the findings to move beyond descriptive exposition toward a coherent methodological assessment of legal dynamism in contemporary Islamic economic regulation.

## RESULTS AND DISCUSSION

### Patterns and Contexts of *Istihsān* in DSN–MUI Economic Fatwas

The findings demonstrate that DSN–MUI economic fatwas employ *istihsān* explicitly as a conscious and structured methodological choice to address regulatory challenges arising from contemporary Islamic economic practices that cannot be sufficiently resolved through formal *qiyās*. Explicit references to *istihsān* appear particularly in fatwas

regulating sharia-based financing, banking operations, and institutional financial products, where strict analogical reasoning risks generating legal rigidity or undermining economic functionality. In such contexts, *istihsān bi al-‘urf* and *istihsān bi al-maṣlahah* are employed to align legal rulings with prevailing economic customs, institutional necessities, and broader public interests. Empirical evidence indicates that DSN–MUI explicitly applied *istihsān bi al-‘urfi* in at least thirteen fatwas issued between 2010 and 2018, reflecting a systematic effort to preserve core sharia values while responding to the evolving structure of Islamic financial institutions.<sup>17</sup> Moreover, studies on the role of DSN–MUI in legitimizing Islamic banking show that explicit *istihsān* is instrumental in facilitating convergence between sharia-based financial models and modern banking practices without abandoning normative Islamic legal foundations.<sup>18</sup> These findings confirm that explicit *istihsān* functions not merely as an exception to legal rules, but as a formal methodological instrument within DSN–MUI fatwas to overcome the structural limitations of *qiyās* in regulating complex and institutionalized Islamic economic activities.

Beyond explicit doctrinal references, the data further reveal that DSN–MUI fatwas employ *istihsān* implicitly through facilitative and moderation-oriented legal reasoning embedded within institutional methodologies. Implicit *istihsān* becomes particularly visible in fatwas that adopt flexible interpretive approaches—such as *taysīr manhajī*—to adapt classical fiqh doctrines to contemporary financial practices without explicitly labeling such reasoning as juristic preference. Empirical studies show that DSN–MUI applies this approach in regulating contracts such as *wadī ‘ah*, *mudārabah*, Islamic hedging instruments, and foreign exchange transactions, where formal *qiyās* alone would be insufficient to accommodate operational realities.<sup>19</sup> In addition, moderation-based reasoning embedded in DSN–MUI fatwas reflects an implicit reliance on *istihsān* to balance legal idealism with economic practicality, particularly in banking, insurance, capital markets, and halal

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<sup>17</sup> Mukri and Aliyeva, “Revitalization of Istihsan Bi Al ‘Urfi in Sharia Financing: Fatwa Study 2010-2018.”

<sup>18</sup> Fakhri and Hamid, “Sacralizing the Market? The Role of DSN–MUI in the Legal-Economic Legitimacy of Islamic Banking in Indonesia.”

<sup>19</sup> Musadad et al., “The Role of The Taysir Manhaji Method in The Development of Islamic Economic Law in Indonesia Through DSN-MUI Fatwas.”

certification regimes.<sup>20</sup> Comparative studies of *murābahah* fatwas further demonstrate that even when explicit references to *istihsān* are absent, DSN–MUI consistently prioritizes legal outcomes that ensure institutional viability and socio-economic effectiveness.<sup>21</sup> This pattern indicates that implicit *istihsān* operates as a latent methodological layer that enhances legal adaptability while preserving doctrinal continuity.

From an *uṣūl al-fiqh* perspective, these findings indicate that the use of *istihsān* in DSN–MUI fatwas—whether explicit or implicit—represents a structured methodological response rather than ad hoc pragmatism. Juristic preference functions as an internal corrective mechanism within Islamic legal reasoning, enabling jurists to mitigate the rigidity of analogical deduction when strict application of *qiyās* risks producing inequitable or impractical outcomes. The coexistence of explicit and implicit forms of *istihsān* suggests a deliberate institutional strategy to maintain continuity with classical jurisprudence while simultaneously ensuring that Islamic economic law remains responsive to contemporary economic realities. This dual deployment reinforces the understanding of *istihsān* as an integral component of legal reasoning rather than a marginal or controversial exception within *uṣūl al-fiqh*.

The socio-economic and transactional contexts in which *istihsān* emerges further highlight its methodological significance in contemporary Islamic economic regulation. Areas such as Islamic banking, capital markets, insurance, and halal certification involve complex institutional arrangements, market competition, and regulatory pressures that cannot be adequately addressed through rigid analogical reasoning alone. In these contexts, the application of *istihsān* allows DSN–MUI to bridge the gap between normative sharia principles and practical economic demands, ensuring that fatwas remain legally credible, socially legitimate, and economically functional. This demonstrates that *istihsān* plays a critical role in enabling Islamic

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<sup>20</sup> Fakhruddin Fakhruddin, Hakmi Hidayat, and Dwi Hidayatul Firdaus, “MODERATION IN DSN-MUI FATWAS: Achieving Justice and Balance in the Shari'a Economic System,” *Jurisdictie: Jurnal Hukum Dan Syariah* 15, no. 2 (2025): 477–98, <https://doi.org/10.18860/j.v15i2.26883>; M S A Alanazi, S R Hidayat, and A O A Alyusufi, “Fatwa, Marketing, and Halal Certification: A Socio-Legal Analysis of The Indonesian Ulama Council Fatwa Number 80 of 2022,” *International Journal of Law and Society* 3, no. 2 (2024): 156–72, <https://doi.org/10.59683/ijls.v3i2.96>.

<sup>21</sup> A Ibrahim and A J Salam, “A Comparative Analysis of DSN-MUI Fatwas Regarding Murabahah Contract and the Real Context Application (A Study at Islamic Banking in Aceh),” *Samarah* 5, no. 1 (2021): 372–401, <https://doi.org/10.22373/sjhk.v5i1.8845>.

economic law to operate as a living regulatory framework rather than a purely idealized normative system detached from socio-economic realities.

Methodologically, the qualitative document analysis employed in this study confirms that DSN–MUI fatwas exhibit consistent and traceable reasoning structures grounded in *uṣūl al-fiqh*. The recurring presence of *istihsān*, particularly in fatwas addressing legal vacuums, institutional needs, and innovative financial practices, reflects methodological intentionality rather than incidental flexibility. By mapping the reasoning patterns within fatwa texts, this study demonstrates that DSN–MUI systematically integrates juristic preference as part of a coherent legal methodology aimed at balancing doctrinal integrity with regulatory effectiveness. This finding supports the argument that DSN–MUI fatwas should be understood as products of structured legal reasoning shaped by institutional responsibility and epistemological coherence.

Overall, the analysis demonstrates that *istihsān* serves as a key driver of legal dynamism in contemporary Islamic economic law. By responding to the limitations of formal *qiyās*, DSN–MUI employs juristic preference to ensure adaptability, legal certainty, and socio-economic relevance without compromising foundational sharia principles. This methodological pattern not only sustains the practical viability of Islamic finance in Indonesia but also contributes to the ongoing evolution of *uṣūl al-fiqh* as an epistemological framework capable of engaging with modern economic governance. In this sense, *istihsān* emerges not merely as a tool of exception, but as a central mechanism through which Islamic economic law negotiates continuity and change.

### **Dialectical Reasoning between Qiyās and Istihsān in Institutional Fatwas**

This section presents the core findings of the study by examining how *qiyās* and *istihsān* interact in the reasoning structure of DSN–MUI economic fatwas. The analysis reveals that institutional fatwa-making does not rely on a single, hierarchically fixed method of legal reasoning, but instead operates through a dialectical pattern in which formal analogy and juristic preference function in a complementary and corrective relationship. While *qiyās* remains the primary reference point for ensuring doctrinal continuity with classical fiqh, the empirical examination of DSN MUI fatwas demonstrates that its application is frequently moderated, redirected, or suspended through *istihsān* when

strict analogy proves inadequate to address contemporary economic realities. This finding indicates that *istihsān* is not employed as an exceptional or marginal technique, but as an integral methodological device embedded within institutional legal reasoning. Consequently, DSN MUI fatwas reflect a structured pattern of methodological negotiation, where legal validity is maintained not solely through analogical consistency, but through the careful balancing of normative coherence, socio-economic functionality, and the objectives of Sharia. The following subsections elaborate this dialectical reasoning by analyzing selected fatwas as concrete manifestations of how *qiyās* and *istihsān* jointly shape contemporary Islamic economic law.

#### **DSN MUI Fatwa No. 05/DSN-MUI/IV/2000 on the *Salam* Contract**

The DSN MUI Fatwa No. 05/DSN-MUI/IV/2000 on the *Salam* contract represents a foundational illustration of dialectical reasoning between *qiyās* and *istihsān* within the context of institutional fatwa-making.<sup>22</sup> In classical fiqh al-mu‘āmalāt, transactions involving deferred delivery of goods that do not yet exist at the time of contract are generally regarded as impermissible due to the presence of *gharar*, which is prohibited to prevent injustice and dispute. If formal *qiyās* were applied rigidly, the *Salam* contract would be subsumed under this general prohibition, as it shares structural similarities with speculative sales. However, DSN MUI recognizes that such a rigid analogical application would fail to account for the socio-economic realities in which advance-payment contracts are indispensable, particularly in agricultural production and commodity financing. This recognition reflects an understanding that legal reasoning in Islamic economic law must be responsive to real economic needs rather than confined to abstract formalism. The tension between doctrinal consistency and economic functionality thus becomes the starting point for dialectical reasoning in this fatwa.

To resolve this tension, DSN MUI employs *istihsān bi al-naṣṣ* by grounding the permissibility of *Salam* in explicit textual evidence from the Qur‘ān and the Sunnah, which recognize the contract as a legitimate exception to the general prohibition of uncertainty. From a methodological perspective, this move illustrates how *istihsān* operates within *uṣūl al-fiqh* as a mechanism for prioritizing stronger legal evidence over analogical inference when the two come into conflict.

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<sup>22</sup> DSN - MUI, “Fatwa DSN-MUI No. 05/DSN-MUI/IV/2000 Tentang Jual Beli Salam,” Pub. L. No. No. 05/DSN-MUI/IV/2000 (2000).

Rather than rejecting *qiyās* altogether, the fatwa reorders the hierarchy of legal reasoning by subordinating analogy to authoritative texts that explicitly permit the transaction. This reflects a coherent methodological logic in which juristic preference does not undermine legal structure, but rather safeguards it from producing unjust or impractical outcomes. In this sense, *istihsān* functions as an internal corrective that preserves doctrinal legitimacy while allowing legal norms to remain applicable.

The dialectical interaction between *qiyās* and *istihsān* becomes even more evident in the fatwa's acceptance of parallel *Salam* (*Salam muwāzī*). From the perspective of strict analogical reasoning, multiple linked contracts could be perceived as problematic due to their resemblance to speculative arrangements. However, DSN–MUI invokes *istihsān bi al-ijmā'*, relying on the consensus of classical jurists who accepted parallel *Salam* under clearly defined contractual conditions. This reliance on *ijmā'* demonstrates how institutional fatwas integrate collective scholarly authority to moderate the limitations of individual analogical reasoning. Methodologically, this approach reinforces the character of DSN MUI fatwas as products of collective *ijtihād*, rather than isolated juristic opinion, thereby strengthening their epistemological legitimacy.

Furthermore, the fatwa's allowance for limited flexibility in the quality of delivered goods illustrates the application of *istihsān bi al-maṣlahah*. Under strict *qiyās*, any deviation from contractual specifications could render the transaction invalid, potentially leading to unnecessary disputes and economic disruption. DSN–MUI instead prioritizes transactional stability and the prevention of harm, recognizing that minor variations do not necessarily undermine fairness or mutual consent. This reflects a substantive conception of justice that goes beyond formal contractual rigidity. Here, *istihsān* enables the law to accommodate practical realities while remaining faithful to the ethical objectives of Islamic commercial jurisprudence.

Taken as a whole, the *Salam* fatwa demonstrates that the dialectic between *qiyās* and *istihsān* allows Islamic economic law to function as a living and adaptive legal system. *Qiyās* provides the structural framework for legal reasoning, while *istihsān* ensures that this framework does not become detached from social and economic realities. Through this dialectical process, DSN–MUI succeeds in maintaining doctrinal continuity while enabling *fiqh al-mu'amalāt* to respond effectively to contemporary economic needs. This fatwa thus

establishes an important methodological precedent for institutional legal reasoning in modern Islamic economic regulation.

**DSN MUI Fatwa No. 101/DSN–MUI/X/2016 on *Ijarah al-Mauṣūfah fī al-Dhimmah* (IMFZ)**

The DSN–MUI Fatwa No. 101/DSN–MUI/X/2016 on *Ijarah al-Mauṣūfah fī al-Dhimmah* (IMFZ) presents a more advanced and nuanced example of dialectical reasoning between *qiyās* and *istihsān*, particularly in addressing contractual forms associated with future delivery of services or benefits.<sup>23</sup> Classical analogical reasoning generally invalidates lease contracts over non-existent objects due to excessive uncertainty, as such arrangements are perceived to compromise contractual clarity and fairness. If this form of *qiyās* were applied strictly, IMFZ contracts would be categorically prohibited, effectively excluding many contemporary financing mechanisms such as off-plan housing and service-based financing from Islamic legal regulation. This would result in a significant disjunction between Islamic legal doctrine and modern economic practice.

DSN MUI responds to this challenge through *istihsān bi al-qiyās al-khaftī*, which replaces overt and rigid analogy with a more subtle, context-sensitive form of reasoning. Rather than analogizing IMFZ to prohibited lease contracts, the fatwa implicitly aligns it with the *Salam* contract, which has long been recognized as a legitimate exception despite involving deferred delivery. This methodological move demonstrates that *istihsān* does not abandon analogical reasoning, but refines it by selecting the most appropriate analogy based on substantive similarities rather than formal resemblance. In doing so, DSN–MUI preserves internal legal coherence while allowing Islamic law to engage with new economic forms.

From the standpoint of *uṣūl al-fiqh*, this fatwa illustrates how *istihsān* functions as an epistemological tool that recalibrates legal reasoning in light of changing socio-economic contexts. By permitting IMFZ under strict conditions of specification, payment clarity, and contractual transparency, DSN MUI ensures that uncertainty remains controlled and non-speculative. This reflects a *maqāṣid*-oriented approach that prioritizes fairness, accessibility, and economic utility. The fatwa thus exemplifies how purposive reasoning can be integrated into classical methodology without undermining doctrinal integrity.

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<sup>23</sup> DSN-MUI, “Fatwa DSN-MUI No. 101/DSN-MUI/X/2016 Tentang Akad Al-Ijarah Al-Maushufah Fi Al-Dzimmah (IMFZ)” (2016).

The socio-economic implications of this dialectic are particularly significant. Modern Islamic finance increasingly relies on future-oriented contracts to facilitate housing, infrastructure, and service provision. A rigid application of *qiyās* would marginalize Islamic finance from these sectors, undermining its relevance and competitiveness. Through *istihsān*, DSN MUI enables Islamic law to regulate these practices constructively, ensuring both sharia compliance and economic viability. This demonstrates the regulatory potential of Islamic law when guided by methodological flexibility.

Ultimately, the IMFZ fatwa underscores the indispensability of the *qiyās istihsān* dialectic in sustaining the relevance of Islamic economic law. Juristic preference emerges here as a methodological bridge that reconciles continuity with innovation, reinforcing the adaptive capacity of *uṣūl al-fiqh* as a living epistemological framework rather than a static set of rules.

**DSN MUI Fatwa No. 94/DSN–MUI/IV/2014 on *Repo Surat Berharga Syariah* (SBS)**

The DSN MUI Fatwa No. 94/DSN–MUI/IV/2014 concerning *Repo Surat Berharga Syariah* (SBS) illustrates a distinct yet critical mode of dialectical reasoning between *qiyās* and *istihsān*, particularly through the lens of necessity (*darūrah*) in contemporary Islamic financial regulation.<sup>24</sup> From the standpoint of formal *qiyās*, repo transactions pose serious doctrinal challenges because they resemble sales combined with repurchase agreements, potentially implicating *bay’ al-‘inah*, *gharar*, and disguised interest-bearing arrangements. Classical analogical reasoning would therefore incline toward prohibition, as the structural features of repo transactions conflict with established fiqh norms governing sale finality and risk allocation. However, DSN MUI recognizes that such a conclusion, if applied rigidly, would generate systemic inefficiencies and threaten the operational stability of Islamic financial institutions, particularly in managing short-term liquidity needs. This recognition foregrounds the methodological tension between doctrinal purity and functional necessity within Islamic economic governance.

To address this tension, DSN MUI employs *istihsān bi al-darūrah*, allowing a controlled exception to the general rules derived through *qiyās*. Methodologically, this move reflects a principled departure from

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<sup>24</sup> DSN-MUI, “Fatwa DSN-MUI No. 94/DSN-MUI/IV/2014 Tentang Repo Surat Berharga Syariah (SBS)” (2014).

formal analogy rather than an abandonment of it. The fatwa carefully circumscribes the permissibility of repo SBS by situating it within emergency liquidity management, thereby preventing its normalization as a routine profit-seeking instrument. This restriction is crucial, as it ensures that *istihsān* operates as a context-bound corrective rather than an open-ended license for legal flexibility. From a *uṣūl al-fiqh* perspective, this demonstrates how juristic preference is disciplined by clear conditions, safeguarding the normative structure of Islamic law while addressing urgent economic needs.

The dialectical relationship between *qiyās* and *istihsān* in this fatwa is further evident in how DSN–MUI reinterprets risk and ownership transfer. While formal analogy would treat the temporary transfer of SBS ownership as legally problematic, the fatwa reconceptualizes the transaction as a liquidity-support mechanism rather than a genuine sale aimed at profit extraction. This interpretive shift reflects a *maqāṣid*-oriented evaluation, where the preservation of financial stability (*hifz al-māl*) and the avoidance of systemic harm take precedence over formalistic readings. In this sense, *istihsān* enables a substantive assessment of economic reality that *qiyās* alone cannot adequately capture.

Importantly, the repo SBS fatwa highlights the institutional dimension of Islamic legal reasoning. Unlike individual juristic opinions, DSN MUI operates within a regulatory ecosystem that intersects with national financial policy, banking supervision, and macroeconomic stability. The deployment of *istihsān* here is therefore not merely juristic, but also regulatory in nature. This underscores how institutional fatwas function as hybrid legal instruments, bridging classical jurisprudence and modern governance requirements. The dialectic between *qiyās* and *istihsān* thus acquires a structural dimension, reflecting the expanded role of Islamic law in contemporary economic regulation.

Overall, this fatwa demonstrates that *istihsān bi al-darūrah* plays a crucial role in preventing Islamic economic law from becoming operationally rigid in crisis situations. By allowing a narrowly tailored exception to analogical prohibitions, DSN MUI preserves both legal integrity and economic resilience. This case reinforces the argument that the adaptability of Islamic economic law is not accidental, but methodologically grounded in the disciplined interaction between *qiyās* and *istihsān*.

#### **DSN MUI Fatwa No. 15/DSN–MUI/IX/2000 on Profit Distribution in Islamic Financial Institutions**

The DSN MUI Fatwa No. 15/DSN–MUI/IX/2000 on the principles of profit distribution in Islamic financial institutions provides a further illustration of dialectical reasoning between *qiyās* and *istihsān*, this time within the domain of distributive justice rather than contractual permissibility.<sup>25</sup> Classical fiqh generally conceptualizes profit-sharing arrangements through *muḍārabah* and *mushārakah*, where profits are distributed based on pre-agreed ratios without explicit consideration of operational costs. If formal *qiyās* were applied strictly, profit calculation would remain detached from the complex cost structures inherent in modern financial institutions. Such an approach, however, risks producing inequitable outcomes, particularly for financial institutions bearing substantial administrative and operational expenses. This tension reveals the limits of analogical reasoning when applied to institutionalized economic settings vastly different from classical commercial contexts.

DSN MUI addresses this limitation through *istihsān bi al-maṣlahah* by endorsing the Net Revenue Sharing (NRS) model, which allows profit distribution after deducting operational costs. Methodologically, this represents a deliberate departure from strict analogical extension of classical partnership models. Rather than replicating historical forms uncritically, the fatwa evaluates the substantive objectives of profit-sharing namely fairness, transparency, and mutual benefit and recalibrates legal rules accordingly. This approach exemplifies how *istihsān* facilitates the internal evolution of Islamic economic law without severing its doctrinal roots.

The dialectical interaction between *qiyās* and *istihsān* in this fatwa is particularly instructive because it operates at the level of economic justice rather than transactional form. While *qiyās* provides the conceptual foundation for profit-sharing, *istihsān* refines its application to ensure proportionality between risk, effort, and reward. This refinement reflects an ethical orientation within *uṣūl al-fiqh*, where legal validity is inseparable from distributive fairness. By adopting NRS, DSN MUI mitigates potential conflicts between institutions and customers, thereby enhancing trust and sustainability in Islamic financial practices.

From a broader theoretical perspective, this fatwa illustrates how *istihsān* contributes to the institutional viability of Islamic finance.

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<sup>25</sup> DSN-MUI, “FATWA DEWAN SYARI’AH NASIONAL NO: 15/DSN-MUI/IX/2000 Tentang PRINSIP DISTRIBUSI HASIL USAHA DALAM LEMBAGA KEUANGAN SYARI’AH” (2000).

Modern financial institutions operate within competitive markets and regulatory environments that demand cost recovery and financial transparency. A rigid adherence to analogical models developed for pre-modern trade would undermine the competitiveness and credibility of Islamic finance. Through juristic preference, DSN–MUI aligns Islamic legal norms with contemporary economic structures while preserving their ethical foundations.

In sum, the profit distribution fatwa demonstrates that the *qiyās–istihsān* dialectic extends beyond questions of permissibility to encompass issues of economic justice and institutional sustainability. *Istihsān* here functions as a methodological instrument that enables Islamic economic law to address structural inequalities and operational realities inherent in modern finance. This reinforces the article's central argument that juristic preference is not merely an exceptional tool, but a core driver of legal dynamism in contemporary fiqh al-mu‘āmalāt.

#### **Methodological Patterns of *Istihsān* across DSN MUI Fatwas**

A cross-case analysis of DSN MUI economic fatwas reveals a coherent and recurring methodological pattern in the deployment of *istihsān* as a structured response to the limitations of formal *qiyās* in contemporary Islamic economic regulation. Across diverse transactional contexts ranging from forward sales (*salam*), deferred usufruct contracts (*ijārah mawsūfah fī al-dhimmah*), liquidity instruments (repo SBS), to profit-distribution mechanisms *istihsān* consistently emerges not as an ad hoc juristic concession, but as a disciplined method embedded within the logic of *uṣūl al-fiqh*. In each case, DSN MUI begins with analogical reasoning as a baseline, identifies the points at which strict analogy generates legal rigidity or socio-economic dysfunction, and subsequently activates *istihsān* to recalibrate legal outcomes in line with substantive justice and public welfare. This pattern demonstrates that *istihsān* functions as an internal corrective to *qiyās*, rather than as an external or competing methodology.

One of the most salient methodological patterns is the contextual differentiation of *istihsān* according to the nature of the legal problem addressed. In transactional permissibility cases such as *salam* and IMFZ, DSN MUI predominantly employs *istihsān bi al-naṣṣ*, *bi al-ijmā‘*, or *bi al-qiyās al-khaftī* to justify departures from general prohibitions related to *gharar*. In contrast, in systemic and institutional contexts such as repo SBS and profit distribution the fatwas rely more heavily on *istihsān bi al-darūrah* and *bi al-maṣlahah* to address macroeconomic stability, liquidity management, and distributive equity. This variation indicates

that *istihsān* is not applied uniformly, but is carefully tailored to the legal structure and socio-economic stakes of each case. Such differentiation underscores the methodological sophistication of DSN MUI's fatwa reasoning and refutes the notion that juristic preference is inherently subjective or arbitrary.

Another consistent pattern is the *maqāṣid*-oriented orientation that frames the use of *istihsān* across all examined fatwas. Although DSN MUI rarely labels its reasoning explicitly as "maqāṣid-based," the operative logic of juristic preference repeatedly aligns with the protection of essential legal objectives, particularly *hifz al-māl* (protection of wealth), *raf' al-ḥaraj* (removal of hardship), and the prevention of systemic harm. *Istihsān* thus serves as a methodological bridge between classical legal forms and contemporary economic realities, enabling Islamic law to preserve its normative integrity while remaining functionally effective. Importantly, this *maqāṣid* alignment does not replace textual or analogical reasoning, but rather evaluates and disciplines them, ensuring that legal derivation remains purposive rather than merely formalistic.

From an institutional perspective, the synthesis of these fatwas reveals that *istihsān* plays a crucial role in transforming Islamic jurisprudence from individual juristic reasoning into a mode of regulatory governance. DSN MUI fatwas operate within a legal ecosystem that intersects with national legislation, financial regulation, and global economic practices. In this setting, *istihsān* enables Islamic legal reasoning to accommodate regulatory complexity, market competition, and technological innovation without collapsing into legal permissiveness. The repeated and patterned use of juristic preference indicates an implicit institutional methodology whereby Islamic law functions as a living regulatory system rather than a static doctrinal corpus.

Taken together, these patterns confirm that *istihsān* in DSN MUI fatwas constitutes a coherent methodological framework rather than a collection of isolated exceptions. Juristic preference consistently mediates between doctrinal continuity and adaptive responsiveness, allowing Islamic economic law to evolve in a principled manner. This synthesis reinforces the central argument of this study: that *istihsān* should be understood not merely as a pragmatic tool, but as a key driver of methodological dynamism within contemporary *uṣūl al-fiqh*, shaping the theoretical and practical development of Islamic Economic Law in institutional contexts.

## **Institutional Fatwas and the Dynamics of Islamic Economic Law**

Institutional fatwas issued by the DSN MUI demonstrate a clear pattern of legal dynamism by acquiring binding force within Indonesia's Islamic economic regulatory framework. This dynamism is driven by the formal recognition of DSN MUI as the authoritative body in determining Sharia compliance for Islamic financial activities, which enables its fatwas to transcend their traditional nonbinding character. Empirical studies indicate that DSN MUI fatwas have been progressively incorporated into national legislation, regulatory instruments of the Financial Services Authority (OJK), and compliance standards governing Islamic banking and finance. This incorporation transforms fatwas into operative legal norms that structure market behavior, institutional governance, and state supervision of Islamic finance.<sup>26</sup> Consequently, DSN MUI fatwas function not merely as juristic opinions but as regulatory instruments that operationalize Islamic economic law within a modern legal system.

The adaptability of institutional fatwas is further reflected in the methodological strategies employed by DSN MUI to reconcile classical fiqh principles with contemporary economic regulation. This adaptability is grounded in the systematic use of interpretive tools such as *taysīr manhajī*, *istihsān*, and *maṣlaḥah*-oriented reasoning, which allow classical contracts and doctrines to be reformulated in response to modern financial practices. Studies show that these methods are consistently applied in DSN MUI fatwas addressing banking products, hedging mechanisms, and digital financial instruments, ensuring compliance with Sharia objectives while accommodating regulatory and market demands.<sup>27</sup> The evidence indicates that institutional fatwas serve as a structured mechanism through which Islamic law adapts to

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<sup>26</sup> Nasrudin et al., "From Nonbinding to Binding: Legal Authority Transformation of DSN–MUI Fatwas within the National Legal System"; Elsy Renie, "The Urgency of Fatwa in The Law of Sharia Economics in Indonesia," *Juris: Jurnal Ilmiah Syariah* 20, no. 2 (December 1, 2021): 201–8, <https://doi.org/10.31958/juris.v20i2.4059>.

<sup>27</sup> Musadad et al., "The Role of The Taysir Manhaji Method in The Development of Islamic Economic Law in Indonesia Through DSN-MUI Fatwas"; G Widjaja, "Legal Analysis of Derivative Transactions in Islamic Economics," *Edelweiss Applied Science and Technology* 8, no. 5 (2024): 692–700, <https://doi.org/10.55214/25768484.v8i5.1733>; Tri Hidayati et al., "Digitalization of Islamic Finance: Epistemological Study of the National Sharia Board-Indonesian Council of Ulama's Fatwa," *Al-Ahkam* 33, no. 2 (October 1, 2023): 255–78, <https://doi.org/10.21580/ahkam.2023.33.2.17324>.

economic transformation without abandoning its normative foundations. Thus, DSN MUI fatwas empirically illustrate how legal dynamism is achieved through methodological recalibration rather than doctrinal rupture.

These findings confirm that institutional fatwas represent a significant shift in the epistemology of Islamic economic law, where legal authority is no longer confined to textual derivation but embedded within regulatory institutions. From an *uṣūl al-fiqh* perspective, this shift signifies a movement from individualized *iftā'* toward collective, institution-based legal reasoning that integrates normative legitimacy with governance functionality. The binding character of DSN–MUI fatwas reflects an expanded understanding of legal authority, in which Sharia norms are translated into enforceable regulatory standards. This transformation challenges classical dichotomies between moral obligation and legal enforcement, suggesting that Islamic law can operate simultaneously as a normative system and a regulatory framework. As such, institutional fatwas emerge as a critical site where Islamic legal theory intersects with modern state law and economic regulation.

The methodological flexibility observed in DSN–MUI fatwas also reinforces the argument that contemporary Islamic economic law is driven by purposive rather than purely analogical reasoning. While *qiyās* remains an essential tool for maintaining doctrinal continuity, the recurrent reliance on *istihsān* and *maṣlāḥah* indicates a conscious effort to prioritize substantive justice and economic functionality. This aligns with the *maqāṣid*-oriented framework identified in the theoretical section, where legal reasoning is evaluated based on its ability to preserve welfare, prevent harm, and ensure market stability. In institutional contexts, such purposive reasoning becomes indispensable, as rigid adherence to formal analogy would often fail to address complex financial realities. Therefore, the data suggest that legal dynamism in Islamic economic law is achieved through a calibrated balance between continuity and adaptability.

At the same time, the findings reveal inherent tensions within the institutionalization of fatwas, particularly regarding the convergence between Islamic and conventional financial practices. Scholars have noted that the accommodative stance of DSN–MUI—especially in legitimizing market-friendly instruments—raises concerns about the dilution of Islamic finance's ethical distinctiveness. However, when viewed through an *uṣūl al-fiqh* lens, such accommodation does not

necessarily indicate normative compromise but reflects the operation of juristic preference within defined methodological boundaries. *Istihsān* in this context functions as a regulatory mechanism that mitigates the shortcomings of strict analogy while safeguarding core Sharia objectives. Thus, rather than signaling convergence *per se*, institutional fatwas illustrate how Islamic law negotiates participation in global financial systems without abandoning its normative identity.

Finally, the persistence of implementation gaps between DSN–MUI fatwas and actual financial practices underscores the limits of legal dynamism when institutional capacity and supervision are insufficient. While fatwas provide a robust normative and methodological framework, their effectiveness ultimately depends on enforcement, practitioner competence, and regulatory coordination. This highlights that legal dynamism in Islamic economic law is not solely a matter of juristic reasoning but also of institutional design and governance. Nevertheless, these limitations do not undermine the role of institutional fatwas as engines of legal adaptation; instead, they point to the need for continuous refinement in oversight mechanisms and legal harmonization. In this sense, DSN MUI fatwas exemplify how Islamic economic law evolves through an ongoing interaction between doctrine, institution, and socio-economic reality.

## **CONCLUSION**

This study has demonstrated that *istihsān* occupies a pivotal and systematic position in the contemporary development of Islamic economic law, particularly within institutional fatwas issued by the Dewan Syariah Nasional Majelis Ulama Indonesia (DSN MUI). The empirical analysis shows that *istihsān* is not employed sporadically or defensively, but rather as a consciously structured methodological response to the limitations of formal *qiyās* in regulating modern, institutionalized economic practices. In multiple fatwas examined, strict analogical reasoning would have produced legal rigidity, economic inefficiency, or regulatory vacuum, especially in contexts involving deferred contracts, liquidity instruments, and complex profit-distribution mechanisms. Through *istihsān*, DSN MUI is able to recalibrate legal outcomes while maintaining fidelity to foundational Sharia principles. These findings confirm that juristic preference functions as a central mechanism through which Islamic economic law preserves both normative legitimacy and practical operability in contemporary economic governance.

From the perspective of *uṣūl al-fiqh*, this research contributes to a deeper theoretical understanding of *istihsān* as an integral component of legal methodology rather than a marginal or controversial exception. The recurring and patterned use of *istihsān* across DSN MUI fatwas indicates an epistemological shift from rigid formalism toward purposive and context-sensitive reasoning. The study reveals that *istihsān* consistently operates as an internal corrective to *qiyās*, intervening precisely at points where analogical deduction risks undermining justice, public welfare, or economic functionality. Importantly, this corrective role does not weaken doctrinal coherence, but instead reinforces the ethical and teleological foundations of Islamic law. In this sense, *istihsān* emerges as a methodological bridge that allows *uṣūl al-fiqh* to evolve without severing its classical roots.

At the institutional level, the findings highlight how DSN MUI fatwas function as engines of legal dynamism within Indonesia's Islamic economic regulatory framework. The transformation of fatwas from nonbinding juristic opinions into binding regulatory references reflects a significant reconfiguration of Islamic legal authority in the modern state. By integrating fatwas into national legislation, financial supervision, and compliance regimes, DSN MUI enables Islamic economic law to operate as a system of governance rather than merely a moral or doctrinal discourse. In this context, *istihsān* plays a crucial role in mediating between Sharia norms and regulatory realities, allowing Islamic law to engage productively with market complexity, institutional constraints, and technological innovation. Thus, institutional fatwas exemplify how Islamic law can function simultaneously as a normative, ethical, and regulatory system.

Methodologically, this study confirms the appropriateness of a qualitative normative legal approach grounded in *uṣūl al-fiqh* for examining contemporary Islamic economic regulation. By systematically analyzing the reasoning structures of selected DSN MUI fatwas, the research moves beyond descriptive accounts of legal outcomes toward an examination of how legal reasoning itself adapts within institutional settings. The findings demonstrate that legal dynamism in Islamic economic law is not the result of arbitrary pragmatism, but of disciplined methodological choices embedded within a coherent epistemological framework. This approach allows Islamic legal reasoning to remain both internally consistent and externally responsive. Consequently, future scholarship on Islamic finance and

economic law would benefit from prioritizing methodological analysis over purely product-based or compliance-oriented evaluations.

At the same time, the study acknowledges ongoing tensions inherent in the institutionalization of Islamic legal reasoning, particularly regarding convergence with conventional financial practices. While DSN MUI's accommodative use of *istihsān* raises concerns about the dilution of Islamic finance's ethical distinctiveness, the analysis shows that such accommodation operates within clear methodological and normative boundaries. Rather than signaling normative compromise, juristic preference functions as a regulatory safeguard that prevents Islamic law from becoming economically irrelevant or socially disconnected. Nevertheless, the persistence of implementation gaps between fatwa norms and actual financial practices highlights the limits of legal dynamism in the absence of effective institutional enforcement and professional capacity. These tensions underscore the need for continuous refinement of governance structures alongside methodological development.

In conclusion, this article argues that *istihsān* constitutes a foundational driver of legal dynamism in contemporary Islamic economic law. Far from being a secondary or exceptional technique, juristic preference enables Islamic law to negotiate continuity and change in a principled and methodologically coherent manner. Through the disciplined interaction between *qiyās* and *istihsān*, institutional fatwas such as those issued by DSN MUI demonstrate that Islamic economic law can remain normatively authentic while adapting to the demands of modern economic life. This study therefore contributes to the re-theorization of *uṣūl al-fiqh* as a living epistemological framework and positions *istihsān* as a key element in the evolving architecture of Islamic Economic Law.

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