P-ISSN 1907–8145; E-ISSN 2460–0717

TIFBR | Tazkia Islamic Finance and Business Review

Volume 16(2), 2022

Page: 1-21

Does the MUI fatwa on Multi Contracts causes Gharar?

Hamzah Rojulul Ghodi Assyarif[1], Andri Nirwana AN[2], Muchammad Ichsan[3]

Abstract. *Islamic Law is focused on the realization of maslahat for humans. This matter e that opposite and contrary to* Benefit *are definitely annulled in Islamic law. Among that are prohibited due to the contrary to* Benefit *in muamalat behaviors is gharar. Among transaction behaviors that containing gharar is multi-contract. Multi-contract or blended contract has different laws and consequences that arise in one contract and time, this is due to uncertainty that occurs, between buying and selling or leasing contracts. In this case, the council of Indonesian Ulama (MUI) has issued a fatwa regarding the rules multi-contract contracts which are justified by Islamic law, no. 27 of 2002 concerning buying and selling leases. This research examines the fatwa, whether the fatwa has the opportunity to cause Gharar or not? The method used in this research is a qualitative method by analyzing the content of the fatwa and testing it with gharar theory which leads to the conclusion that the fatwa DSNMUI no.27 of 2002 has not causing Gharar. Therefore, the fatwa can be applied in many contemporary financial transactions.*

Keywords *Fatwa, Multi contract, Gharar, Muamalat*

Abstrak. *Hukum dalam syariat islam tertuju pada realisasi maslahat bagi manusia , sehingga hal hal yang berlawanan dan kontra dengan kemaslahatan pasti di anulir dalam syariat islam, diantara hal hal yang di larang karena kontra dengan maslahat adalah perilaku muamalat yang mengandung gharar, diantara perilaku transaksi yang mengandung gharar adalah mualamat multi kontrak yang berbeda hukum dan akibat yang di timbulkan dalam satu akad dan waktu, hal itu disebabkan karena adanya ketidak pastian akan akad yang terjadi , antara akad jual beli atau sewa, dalam hal ini , dsn -mui mengeluarkan fatwa tentang aturan akad multi kontrak yang di benarkan oleh syariat islam , tertuang dalam fatwa no, 27 tahun 2002 tentang jual beli sewa, peneletian ini akan menguji fatwa tersebut, apakah fatwa berpeluang menimbulkan gharar atau tidak? , metode yang digunakan dalam peneltian ini adalah metode kualitatif dengan cara menganalisa konten fatwa lau mengujinya dengan teori gharar yang mengantarkan pada kesimpulan bahwa fatwa dsn- mui no.27 tahun 2002 tidak berpeluang menimbulkan ghoror.*

Kata Kunci: *Fatwa, Multi kontrak, Gharar, Muamalat*

Introduction

There are three objectives of Islamic law that need to be understood;, first, purification of the soul, with this goal so that every Muslim can become a source of goodness for the community in which he lives, this can be

[1] Universitas Muhammadiyah Surakarta | hamzahassyarif28@gmail.com
[2] Universitas Muhammadiyah Surakarta | andri.nirwana@ums.ac.id
[3] Universitas Muhammadiyah Yogyakarta | drichsan65@umy.ac.id

accomplished through a variety of religious rituals, all of which are intended to cleanse the soul and the dirt that is attached to the human heart.

Second, upholding justice in Islamic society, whether fair to fellow Muslims or non-Muslims, based on what is understood from the contents contained in the Koran, at least fairness can be interpreted in terms of the following, (i) equality of compensation: equality compensation can be interpreted by providing compensation in accordance with the amount of sacrifice that is given. (ii) legal equality: equality of all people before the law without discrimination, that all people must be treated equally before the law. (iii) moderate: that is interpreted as being in the middle position. (iv) proportional: fair does not always mean equal rights, but this right is adjusted to the level of need, ability to contribute. *Third*, the ultimate goal to be achieved (*Maqashid shariah*) and must be contained in every sharia law, namely *Maslahat* (benefits), so every sharia law in Islam cannot be separated from the benefits in this world and the hereafter. (Daud, 1996)

The achievement of *Maslahah* and the rejection of *Mafsadah* is the main goal in establishing Islamic law, the scholars make these two concepts as the main guide when dealing with legal issues. Using the *Maslahah* and *Mafsadah* approaches in determining a law does not mean to make human desires or interests solely as a source of law. The determination of a law based on the concept of *Maslahat* and *Mafsadah* is also not solely based on worldly goals so that it overrides syarak. This is because, every form of Shariah creates benefits, (Al Syatibi, 2003) Islamic law cannot be separated from the achievement of Benefit and the rejection of *Mafsadah*. In fact, based on these two concepts, the ulama and mujtahid tried their best to solve problems that did not have text in the Qur'an and al-Sunnah based on several methods shown by friends and tabiin, and developed their respective methods to become certain sects/ *Madzhab*.(Khallaf, 1942).

Therefore, the Shariah orders people to do things that can bring benefits to both the world and the hereafter, prayer, almsgiving, friendship, work and other practices, are ordered in the Shariah so that humans can achieve

goodness, prosperity in this world and in the hereafter, so Also, he forbids mankind from doing something that is contrary to benefit, prohibits *bid'ah* because it can damage the benefit of the hereafter, and so applies to stealing which is prohibited in the Shariah because it is contrary to material Maslahat.

Among the behaviors that are prohibited by the Shari'a because they conflict with Maslahah are transaction behaviors that contain gharar, gharar rules are rules that have been agreed upon by the scholars regarding their prohibition, as narrated by Abu Hurairah, "*Rasulullah shallallaahu 'alaihi wasallam forbids buying and selling by means of -hashah (namely: buying and selling by throwing pebbles) and other methods that contain elements of gharar (speculative*)" (Muslim, no: 2783).

Problems involving transactions containing elements of gharar are numerous, such as buying and selling fish in large ponds, buying and selling seeds of fetuses still in the bones of male animals, bai hashah, bai' mulasamah, and also multi-contract transactions in one contract which are not permitted. as narrated by Abdullah Bin Mas'ud,

"*The Prophet sallallaahu 'alaihi wasallam forbade two contracts in one* "(HR. Ahmad. No 3783).

The National Sharia Council - The Indonesian Ulama Council issued a fatwa regarding multi-contract ijarah Muntahiyah bit tamlik which is considered in accordance with the rules and provisions of Islamic Sharia, this is stated in fatwa no 27 of 2002. Departing from the explanation above, this research will try to analyze the fatwa, whether it is free from elements of *Gharar* or vice versa has the possibility of gharar

Literature Review

Fatwa

Fatwas are information about the law of Allah SWT which is sourced from the arguments of the syar'i arguments carried out by al-mufti,(al asyqar, 1979) in the religious realm it has enormous urgency and benefit in the life of Muslims. This is bearing in mind that basically the Qur'an and al-Hadiṡ are still

global in nature, so they require analytical detail, so that Muslims know the real problem. The second legacy of the Prophet saw. it still requires a detailed explanation of the issues previously raised, as long as the problem is still *ẓann*y in nature.(Khallaf, 1942) Regarding the problem of arguments that are *qaṭ'i*,(Khallaf, 1942) there are two popular opinions. The first opinion is that the *qaṭ'i* arguments do not need a detailed and detailed explanation. The second opinion states the arguments that even the *qaṭ'i* still require in-depth elaboration and analysis. As long as it does not go out of the rules of interpretation and *takwil* that have been determined by the rules (rules) that apply. These reasons can be justified considering that Muslims in general do not know in depth the contents of the Qur'an and al-Hadiṡ. In this context, fatwas have an important role because they are the result of decisions of Islamic religious experts in giving, issuing, and making legal decisions responsibly and consistently.(Fatah, 2010)

There are two important things in a fatwa that need to be understood, namely: First, it is a legal opinion issued after a question or request for a fatwa (based on demand). In general, fatwas are issued in response to questions in the form of events or cases that have occurred in society. A mufti may refuse to issue a fatwa on questions about events that have not yet occurred. Second, fatwas are not binding. People requesting a fatwa (*mustafti)*, both individuals and general public groups, do not have to follow the contents of the fatwa decision. This is due to the fact that fatwas are not as binding as court decisions (*qaḍā'*). It could be that the fatwa of a mufti in one place is different from the fatwa of another mufti in the same place which is influenced by many factors. However, if this fatwa is later adopted into a court decision, then it will have binding legal force, especially if it is adopted as positive law/regulation in a certain area.(Barlinti, 2010; Rofiq, 2012)

Fatwas must always be updated to keep up with the times, bearing in mind that the existence of Islamic law today depends on the pace of development of the current situation and conditions. Therefore, fatwas must pay attention to the following matters: First, social changes, including cultural,

economic and political changes at the present time which require Islamic jurists (fuqahā) to conduct a review of the opinions of previous scholars who are inconsistent again with the current social context. Second, the development of science and technology has greatly influenced efforts to find stronger opinions (*arjah*) among the opinions that have developed in classical fiqh where in the classical period science and technology had not developed rapidly, especially the exact sciences. With the help of science and technology, *fuqahā* can review old legal provisions that have become discourses in the Middle Ages to be contextualized with current conditions that are far more complex. At this time, the determination of a stronger opinion (arjah) is not only based on textual arguments with a deductive approach, or even just a school of fiqh an sich approach, but also its relevance to changes in society. Third, the demands of the times require the *fuqahā* to see the complexity of contemporary problems and choose legal views and fatwas that make it easier (*taysīr*) and avoid difficulties (*al-haraj*) in *furu'* or branch laws, both in matters of worship and muamalah. Fourth, the emergence of new cases requires new ijtihad because these problems have never been answered by the classical jurists.(Saputra, 2014)

Multi contract

Multi contract is composed of two words, contract and multi, so to understand its meaning we need to know the meaning of both. The word contract comes from Arabic العقد which means to bind, establish, build(Ma'luf, 1986) and the opposite of letting go. The word contract also means agreement or promise. The word contract has been absorbed in Indonesian which etymologically means to confirm, ratify and enter into an agreement (Munawwir, 1997) Meanwhile, in terminology, the contract means entering into an agreement or bond that results in the emergence of obligations. (Ma'luf, 1986). According to Wahbah az-Zuhaili, contract is a relationship or engagement between consent and qabul in accordance with the will of sharia

which determines the existence of legal consequences on the object of the engagement."(azzuhaili, 2006)

In Indonesian law, contract is defined as an agreement. Meanwhile, in terms of Islamic law, there are several definitions, namely:

- Akad means the relationship between ijab (a statement of offer or transfer of ownership) and qabul (a statement of acceptance of ownership) within the scope that is prescribed and has an effect on something.
- In the opinion of the Syafi'iyah, Malikiyah and Hanabilah scholars, that is everything that is done by someone based on their own wishes, such as waqaf, divorce, liberation, or something whose formation requires the will of two people such as buying and selling, representation, and mortgage
- The contract is a consent meeting proposed by one party with the acceptance of the other party which creates legal consequences for the object of the contract.

Regarding this contract, Mahmashany(2003) divides legal actions on property in two forms, the first is called a contract, which is an activity that requires the agreement of two or more parties. Second, an activity can occur only from one-sided will. Included in the first group are buying and selling, leasing, greetings, and others. Included in the second group are: additional acts in family law and conditions, vows and oaths, related to matters of worship are cancellations in family law, such as divorce, freeing slaves and others; waqf and testament and debt relief, cancellation, and *kafâlah*

Multi in Indonesian means many (more than one) and multiplied (KBBI, 1996). Thus, Multi contract in Indonesian means multiple contracts or many contracts, more than one. Meanwhile, according to the term fiqh, the word multi-contract is a translation of the Arabic word, namely al-'uqûd al-murakkabah which means a double (duplicate) contract. *Al-'uqûd al-murakkabah* consists of two words al-'uqûd (plural of 'aqd) and *al-murakkabah*.

Based on an understanding of the meaning of contract and multi (murakkab), Multi contract according to Nazih Hammad (2005) is an agreement between two parties to carry out a contract that contains two or

more contracts such as buying and selling by leasing, grants, wakalah, qardh, muzara'ah, sharaf (currency exchange), *syirkah, mudharabah* and so on. So that all the legal consequences of the contracts that are collected, as well as all the rights and obligations arising from them are seen as a single entity that cannot be separated, as the legal consequences of one contract.

The variety of of Multi contracts

According to Al-'Imrani, multi-contracts are divided into five types, namely *al-'uqûd al-mutaqâbilah, al-'uqûd al-mujtami'ah, al-'uqûd al-mutanâqidhah wa al-mutadhâdah wa al-mutanâfiyah, al-' uqûd al-mukhtalifah, al-'uqûd al-mutajânisah*. Of the five kinds, according to him, the first two types; *al-'uqûd al-mutaqâbilah, al-'uqûd al–mujtami'ah*, are Multi contracts that are commonly used.

Dependent Contract/Conditional Contract (*Al-'Uqûd al-Mutaqâbilah*)

Al-Mutaqâbilah according to language means dealing. Something is said to be facing each other if both are facing each other. While what is meant by *al-'uqûd al-mutaqâbilah* is multiple contracts in the form of a second contract responding to the first contract (Imam Malik,1323 H:126) where the perfection of the first contract depends on the perfection of the second contract through a reciprocal process. In other words, one contract depends on another contract. In the fiqh tradition, this type of contract model has been known for a long time and has been widely practiced. Many scholars have discussed this theme, both with regard to the law, or the exchange model. For example, between exchange contracts (*mu'âwadhah*) with a *tabarru'* contract, between a *tabarru'* contract and a tabarru' contract or an exchange contract with an exchange contract. Ulama used to define this contract model with a conditional contract (*isytirâth 'aqd bi' aqd*).(Imrani, 2006)

Blended Finance Contract (*al-'Uqûd al–Mujtami'ah*)

Al-'uqûd al-mujtami'ah is a multi-contract or blended contract that is collected in one contract. Two or more contracts are combined into one contract. For example, "I sell this house to you and I rent another house to you for one month for five hundred thousand". This multi-contract can occur by combining two contracts that have different legal consequences in one contract for two

objects with one price, two different contracts with legal consequences in one contract for two objects with two prices, or two contracts in one contract. different laws for one object with one reward, either at the same time or at different times

Opposing Agreement (*al-'Uqûd al-Mutanâqidhah wa al-Mutadhâdah wa al-Mutanâfiyah*)

The three terms *al-mutanâqidha, al-mutadhâdah, al-mutanâfiyah* have in common that all three contain different meanings. But these three terms carry different implications. *Mutanâqidah* contains the opposite meaning, as in the example of someone saying something and then saying something else that is the opposite of the first. Someone says something is right, then says something again is wrong. The words of this person are called *mutanâqidah*, opposite to each other. It is said *mutanâqidah* because one with the other does not support each other, but breaks.

Different Contract (al-'Uqûd al-Mukhtalifah)

The difference between multi-contracts that are *mukhtalifah* and those that are *mutanâqidah, mutadhâdah*, and *mutanâfiyah* lies in the existence of each contract. Although the word *mukhtalifah* is more general and can include the other three types, in *mukhtalifah*, although different, it can still be found according to the Shari'a. As for the third different category, it contains annihilation of each other between the contracts that build it. From the differences above, it can be understood that Multi contracts which are *mutanâqidhah, mutadhâdah*, and *mutanâfiyah* are contracts that may not be combined into one contract. However, the views of the scholars on the three forms of multiple contracts are not same

Similar Contract (*al-'Uqûd al-Mutajânisah*)

Al-'uqûd al-murakkabah al-mutajânisah are contracts that may be collected in one contract, without affecting the law and legal consequences. This type of multi-contract can consist of one type of contract, such as a sale and purchase contract and a sale and purchase contract, or of several types, such as a sale and

purchase contract and a lease. This type of Multi contract can also be formed from two contracts that have the same or different laws.

Multi contract Law

Regarding the legal status of multiple contracts, scholars differ in opinion, especially with regard to the legal origin. This difference concerns whether multiple contracts are legal and permissible or null and void and prohibited from being practiced. Regarding this matter the scholars are in two opinions; allow and forbid.

The majority of *Hanâfiyah* scholars, some of the opinions of *Malikiyah* scholars, *Syafi'iyah* scholars, and Hanbali are of the opinion that the multi-contract law is legal and permissible according to Islamic law. For those who are allowed to reason that the original law of the contract is permissible and valid, it is not prohibited and canceled as long as there is no legal argument that forbids or cancels it. (Imrani, 2006)

The original law of syara' is that it is permissible to carry out multiple contract transactions, as long as each contract that builds it is carried out separately.

the law is permissible and there is no argument against it. When there is an argument that prohibits it, then that argument does not apply in general, but excludes cases that are forbidden according to that argument. Because of that, the case is said to be an exception to the general rule that applies, namely regarding the freedom to enter into contracts and carry out agreements that have been agreed upon. (Hammad, 2005)

In other words, it can be concluded that multiple contracts are part of muamalat, which if we refer to the rules of fiqh (*al Ashlu fil asy ya'al ibahah*) In other words, it can be concluded that multiple contracts are part of muamalat, which if we refer to the rules of fiqh, then the contract is valid and permissible as long as there are no syar'i arguments that contradict it and do not conflict with sharia principles, such as usury, gharar, and others .

Gharar

The word gharar has meaning fraud, or misdirection, but also can mean something dangerous risk or hazard. In interpretation In the world of finance, gharar can be interpreted as "uncertainty", risk or speculation (Warde, 2009). Gharar has several meanings in language namely: first gharar means risk (*khatar*), which is meant by *al-khatar* is seen as the same as gharar related to the object of the contract that is not clear, whether the object of the contract is defective or not disabled, because it is vague or unclear the quality and quantity of the object (Mubarok, 2017:194) in view relationship between gharar and risk (*khatar*), the scholars explain some opinion that is (az zuhaili, 2006) :

a. Shaykh al-Islam Ibn Taimiah say that gharar is uncertainty of the object of the contract (*al-gharar huwa al-majhûl al-'âqibah*).
b. Ibn al-Qayyim explained that gharar is something that is in between existing and non-existent/exhausted (*al gharar huwa mâ taraddada baina al huṣûl wa al-fawât*). There is a risk which is the integrity of the object of the contract (flawed or sketchy) so potentially gave birth to a dispute, therefore gharar can be interpreted as a risk (*khatar*)

Second, gharar means deception (*khid'ah*). Literal meaning of gharar considered the same as *khid'ah* to have several derivations, among them (Askar, 2009):

- Decreased wealth
- Disputes or fights about
- something
- disappear
- Don't remember
- Bad/broken
- Doubt what it looks like
- Tricked

Third, gharar means vague/unclear/uncertain (*jahalah*), this is the meaning of the gharar most common. Al-jahalah can happen on the following matters (Mubarok & Hasanuddin, 2017)

- The object of the contract is not clear, it happens ambiguity due to uncertainty contract object (such as *ba'i al-haṣâh*), unclear quality (defect or no), unclear specifications and when it was handed over (as in *bai' salam, bai' al-istiṣnâ'* and *ijârah mauṣûfah fî až-žimmah*). Beside In addition, ambiguity can also occur in terms of *qudrat al-taslim*, that is whether or not the object allows contract can be handed over (eg *bai' al-'abd al-âbiq*).
- Unclear terms (eg *ikhtilâf* of scholars regarding sale and purchase of *wafâ`*).
- The price is not clear (*tsaman* in the contract buying and selling) and *ujrah* and term the time (in the *ijârah* contract).

From the explanation above, it can be understood that gharar means *jahalah* is the ambiguity related to the substance of the contract, which is related to the quality and quantity of the contract, and the uncertainty regarding when and how to hand it over.

The definition of gharar according to the term put forward by many scholars among them: *Ibn Taimiah* explained that al-gharar is something whose consequences cannot be known. Al gharar has many meanings, including: first, something that is hidden either the consequences, the secret, or everything. secondly, something that is not clear whether it is smooth or defective so that in this way the purpose of holding the contract can be achieved or not (Shadiq, 1990). *Ibn al-Qayyim* (al-Jauziyah, 1998) argues that gharar is something whose acceptance cannot be measured, whether the item exists or does not exist. As-Sarakhsi, stated that gharar is something that has hidden consequences. Ibn Hazm put forward the definition of gharar is a situation where when the buyer does not know what is being bought or the seller does not know what is being sold (Hazm, 1999).

Another definition put forward by fiqh experts by interpreting gharar is a trait in muamalah that causes some of its pillars to be uncertain (*Mastûr al'âqibah*) (AAOIFI, 2010: 31). Other terms in the science of fiqh that are interconnected are gharar and *taghrîr*.

At-Taghrir is synonymous with the word al-gharar indicating activities or activities, namely efforts to influence other parties, both with words and actions that contain lies, so that they are interested in making transactions (Mubarok & hasanuddin, 2017). Another definition of *taghrîr* is put forward by Afzalur Rahman (1996: 4/161), Taghrir means doing something blindly without sufficient knowledge, or taking the risk yourself from an act that carries risks without knowing exactly what the consequences will be, or entering the risk arena without think about the consequences.

The definition of gharar according to the term put forward by many scholars among them: *Ibn Taimiah* explained that al-gharar is something whose consequences cannot be known. Al gharar has many meanings, including: first, something that is hidden either the consequences, the secret, or everything. secondly, something that is not clear whether it is smooth or defective so that in this way the purpose of holding the contract can be achieved or not (Shadiq, 1990).

Ibn al-Qayyim Al Jauziyah (1998) argues that gharar is something whose acceptance cannot be measured, whether the item exists or does not exist. As-Sarakhsi, stated that gharar is something that has hidden consequences. Ibn Hazm put forward the definition of gharar is a situation where when the buyer does not know what is being bought or the seller does not know what is being sold (Ibn Hazm, undated).

Another definition put forward by fiqh experts by interpreting gharar is a trait in muamalah that causes some of its pillars to be uncertain (*mastûr al'âqibah*) (AAOIFI, 2010: 31). Other terms in the science of fiqh that are interconnected are gharar and taghrîr.

At-Taghrir is synonymous with the word al-gharar indicating activities or activities, namely efforts to influence other parties, both with words and actions that contain lies, so that they are interested in making transactions (Mubarok & hasanuddin, 2017). Another definition of *taghrîr* is put forward by Rahman (1996), At Taghrir means doing something blindly without sufficient knowledge, or taking the risk yourself from an act that carries risks without

knowing exactly what the consequences will be, or entering the risk arena without think about the consequences.

From the definition that has been put forward above, it can be taken to mean that gharar is essentially an element that can harm parties in a contract, something that is detrimental at first is hidden so that it is very likely that both of them will feel the loss afterward. Hidden outcomes are heavily influenced by the presence of imperfect information on those who trade.

Karim, (2011) explains that gharar originates from the problem of dissimilarity in the information of the transacting parties, resulting in uncertainty created by a lack of information or lack of control in transactions. The prohibition of *Gharar* has a purpose (Maqâṣid) namely so that no parties in the contract are harmed, because they do not get their rights, and so that there are no disputes and hostilities between them.

The variety of Gharar

By paying attention to the definition of gharar put forward by experts, an understanding can be drawn regarding the form of gharar which includes three things, namely: First, gharar in terms of legal subject. Ibn Hazm al-Zhahiri stated that gharar related to legal subjects is when the buyer does not know what he is buying or the seller does not know about the quality or quantity of the object he is selling. Gharar can occur in terms of legal subjects with several possibilities (Mubarok & Hasanuddin, 2017):

- The legal subject does not know the form or nature of the object of the contract, both in terms of quality and quantity. This can be caused because legal subjects do not have sufficient knowledge about it
- The legal subject knows that the object of the contract already exists at the time the contract is made, but the quality and quantity are uncertain.
- The legal subject knows the object of the contract at the time of the contract because it exists, but does not have sufficient knowledge to determine the quality of the main parts (for example buying and selling a used car by a buyer who does not understand car engines), as stated

by Al-Adawi that gharar is a contract whose object is convincingly existing at the time of the contract, but whose perfection is doubtful.

- Gharar means manipulation which shows that gharar occurs due to fraud committed by business people by only explaining aspects of the advantages/privileges of the object of the contract accompanied by hiding the weaknesses or defects.

The substance of the prohibition of gharar from a legal subject point of view is that people who are intellectually incompetent should be better off conducting business transactions by giving power of attorney to experts so that disputes can be minimized in the future.

Second, gharar in terms of shîghat contract. Ṣîghat contract is the agreement of each legal subject to do or not do something. In the book *al-gharar wa aṡaruhu fî al-'uqûd fî al-fiqh al-islâmi* by ash-Sadiq Muhammad al-Amin aẓẒahir, six forms of sale and purchase contracts are explained which are unclear (jahalah) from the point of view of ṣîghat or contract statements, namely(Mubarok & Hasanuddin, 2017):

- Two buying and selling in one buying and selling (*bai'atanî fî al-bai'ah. Ṣafqatani fi al-ṣafqah al-wahidah*).
- Down payment in buying and selling (bai' al-'urban) where payment of the price takes precedence and is not returned by the prospective seller if the sale and purchase contract is cancelled.
- Contract of sale and purchase of a certain object at a certain agreed price, where the seller and the buyer agree to use pebbles or arrows to determine the boundaries of the object of sale and purchase (*bai' al-ħaṣâh*).
- Buying and selling that uses throwing as a sign of buying the object hit by the throw (*bai' al-munâbażah*).
- Buying and selling that makes touch a sign of buying the object touched *(bai' al-mulâmasah)*
- Conditional buying and selling contract (*mu'allaq*).

Third, gharar in terms of the object of the contract, there are four types of gharar namely (Mubarok & Hasanuddin, 2017):

a. The object of the contract does not exist, both physically and legally, at the time the contract is made. For example, the essay buying and selling ma'dûm (objects that are traded do not exist).
b. The object of the contract already exists, both physically and legally, at the time it is carried out, but it is not clear. Such as the prohibition of buying and selling *ħabl al-ħabalah* and buying and selling of al-ħaṣâh.
c. The object of the contract already exists, both physically and legally, at the time it is carried out, but cannot be handed over. Such as the prohibition on buying and selling birds in the air, fish in the sea and livestock or pets that have run away. The object of the contract already exists, both physically and legally, at the time the contract is made, but cannot be handed over, such as the prohibition on buying and selling birds in the air, the fish in the sea and the animals that are running away.

Method

The method to be used in this study is qualitative through content analysis , by means of analyzing the content of the DSN-MUI fatwa no. 27 of 2002 and tested it with *Gharar* theory as grounded theory , while the data collection technique that will be used is literature study, namely collecting primary data related to topics from various sources, both scientific journals and other sources, which is strengthened by secondary data.

Results and Discussion

MUI arguments

The Indonesian Ulema Council (MUI), in this case the National Sharia Council (DSN), issued a fatwa regarding Ijarah Muntamiyyah Bittamlik, stated in Fatwa No. 27 of 2002, which explains the law of the ijarah Muntamlik contract.

In giving a fatwa on this matter, the DSN-MUI relies on several shariah arguments, from the Al Qur'an, the hadiths of the Prophet SAW, and the principles of fiqh. As for the argument of the Koran is "Are they distributing the mercy of your Lord? We have determined between them their livelihood in the life of this world, and We have exalted some of them above others in several degrees, so that some of them may take advantage of others. And the mercy of your Lord is better than what they collect." (az Zukhruf:32)

From the verse above, we can understand that sustenance is Allah's responsibility for humans, humans should not need to worry about sustenance, with this sustenance Allah also makes some people employ others, even though grace from Allah is better than what we collect from the world's material(ibnu katsir, 2000).

This verse is the opening argument used by the DSN-MUI, which contains the message that in muamalat it is necessary to also consider the elements of the Shariah, so that in this way the grace of Allah SWT will return, As for the arguments of the Sunnah are as follows the prophet said "Whoever employs worker, let him know his wages".

This hadith explains the provisions of the ijarah contract, that in the contract it must be clearly visible, not obscure, both the subject of the contract, the object of the contract and the shigat of the contract. as for the following two hadiths

"We once rented out land with yields (paid) plants growing in ditches and irrigated places water; So Rasulullah forbade us to do that and ordered us to lease the land it with gold or silver (money)." and "The Prophet forbade two forms of contract at the same time one one object." explains about the order to leave a contract that contains gharar where the first hadith explains about the prohibition of a gharar contract which lies in the object of the contract, namely ujroh that is paid, where the behavior written in the hadith can invite disputes and conflicts, while the second hadith of gharar occurs in the sighat contract, where two contradictory contracts are collected for one object that occurs at one time, whereas if the object is different, either at one price or at a different time,

some experts are of the view that this can't be done because it is apart from gharar.

while the following hadith "Agreements may be made between Muslims except for agreements that forbid what is lawful or justify what is unlawful; and the Muslims are bound with their terms except those conditions forbid what is lawful or make what is lawful unlawful." was interpreted by the DSN-MUI as a provision in a valid agreement in Islamic law, that an agreement that is permitted in Islamic law is an agreement that does not make something lawful become unlawful and what is unlawful becomes lawful, if an agreement contains this matter then the agreement is consider null and void.

while the principle of fiqh argument, DSN-MUI relies on two principles namely "Basically, any form of mu'amalat is permissible, unless there is an argument that forbids it." and "Wherever there is *maslahat*, there is Allah's law."

The first explains that the original law of all muamalat in Islam is permissible to obtain arguments that forbid it, so that it becomes unlawful. As for the rule that emphasizes that benefit is the spirit and the main goal of the Shari'a law that Allah sent down

***ISTINBATH* (Legal Conclusion)**

In determining fatwas, the DSN-MUI uses three approaches, namely the *naṣ qaṭ'i* approach, the *qauli* approach (verbal statement) and the *manhaji* approach (methodological)(Saputra, 2014).

From the arguments presented by DSN-MUI, it is of the opinion that the *ijarah Muntahiyah bittamlik* contract may be carried out in the Shari'a with the following provisions:

- All the pillars and conditions that apply in the Ijarah contract (DSN Fatwa number: 09/DSN-MUI/IV/2000) also apply in the *al-Ijarah al-Muntahiyah bi al-Tamlik* contract.
- The agreement to enter into the al-Ijarah al-Muntahiyah bi al-Tamlik contract must be agreed upon when the Ijarah contract is signed.
- The rights and obligations of each party must be explained in the contract.

- The party that performs *al-Ijarah al-Muntahiyah bi al-Tamlik* must carry out the Ijarah contract first. The contract for transfer of ownership, either by buying and selling or gifting, can only be carried out after the Ijarah period is over.
- The promise of transfer of ownership agreed at the beginning of the Ijarah contract is wa'd (الوعد) which is not legally binding. If the promise is to be implemented, then there must be an agreement on the transfer of ownership which is carried out after the Ijarah period is over.

Based on the gharar theory that have discussed, this study found that *gharar* might be occur in three dimensions, legal subject, legal object and *shigat* contract. Legal subject: *gharar* that occurs in legal subjects if the legal subject does not have complete information about the contract and the legal object being transacted or the legal subject does not have sufficient ability to understand the contract. Refer to the DSN-MUI fatwa, the study found that it becomes it is a must for every party to have adequate information about the rights, obligations and description of the object of the contract, we can find this in the general provisions in the fatwa where it is stated that all the pillars and conditions that apply in the ijarah fatwa apply to the *ijarah muntahiyah bit tamlik*, and the agreement for the *ijarah muntahiyah bit tamlik* contract was agreed upon when the contract was signed, also all obligations and rights were fully explained in the contract.

Legal object/contracts*: gharar* that occurs on a legal object can occur due to several things, namely the quality of the goods, the quantity of the goods, the form of the goods, and the possibility of handing over the goods being contracted, if we look at the DSN-MUI fatwa, the fatwa on *ijarah Muntahiyah bittamlik* is closely related to another DSN-MUI fatwa, namely fatwa No. 09 of 2000, where if referring to the fatwa there is a clause that regulates the object of the contract including, the benefits must be assessed, the benefits that are contracted are something that is justified by the Shariah, the specifications must be clear, can be handed over etc., so that it can be concluded that there is no gharar in terms of objects.

Shigat contract: the occurrence of *gharar* on *shigat* in a contract due to the accumulation of two conflicting contracts in one contract and object without definitively determining whether one of them is valid, for example the accumulation of buying and selling and leasing contracts on one object and at the same time, but If we observe the provisions of the special fatwa for *ijarah Muntahiyah bittamlik*, we find that the provisions that apply are a lease contract with an agreement, where in the Shariah the agreement is not a contract, and it is emphasized in the fatwa that the agreement in ijarah *muntahiyah bittamlik bittamlik* is non-binding, if it is binding then the essence is will turn into a contract, where the contract is something that is binding, so that we clearly understand that the agreed contract is a lease accompanied by a promise to carry out other transactions that are carried out after the ijarah period is completed, but as a result there is no gharar in the *shigat ijarah muntahiyah bittamlik* contract.

Below is a comparison table between the theory of *gharar* and the DSN-MUI fatwa

Gharar	Fatwa
incomplete information retrieval / unable to understand information	it is a must for every party to have adequate information about the rights, obligations and description of the object of the contract
the object is not known/impossible to be handed over	the benefits that are contracted are something that is justified by the Shariah, the specifications must be clear, can be handed over etc
there is no certainty of contract	the agreed contract is a lease accompanied by a promise to carry out other transactions that are carried out after the *ijarah* period is completed

Conclusion

Gharar can occur in 3 cases, subject, object and contract shigat, DSN-MUI fatwa no 27 of 2002 requires that all rights and obligations must be explained in detail so that each party has sufficient information about the agreed contract, as for the benefits rented out must be in accordance with the rules written in the DSN-MUI fatwa no 09 of 2000 with various provisions that require eliminating the possibility of gharar, while the shigat contract in the fatwa is a lease and an agreement for another contract that will be carried out after the lease agreement thoroughly, thus negating gharar in the Shigat contract.

This was reinforced by the results of field research conducted by Hijrianto(2010) on the implementation of the ijarah Muntahiyah bittamlik contract in accordance with the fatwa at Bank Muamalat, Mataram branch, with the following points:

- each party has sufficient information about rights and obligations.
- The agreed contract is a lease with an agreement to make a new transaction after the lease is completed
- each party has sufficient information about the object of the contract, and the certainty of receiving their rights.

With the results of this research, both sides were spared from the uncertainty that was contained in gharar.

References

Al Asyqar, Muhammad sulaiman abdullah. (1979). *al futya wa manahijul iftaa'* (1st ed.). maktabah manaaril .

Al-Jauziyah, I. Q. (1998). *Zad al-Ma'ad fi Hady Khayr al-Ibad.* (Vol. 5). Muassasat al-Risalah.

Askar, S. (2009). *Al-azhar: Kamus Arab-Indonesia*. Senayan Publishing.

Azzuhaili, Wahbah. (2006). *Al-fiqh al-islâmi wa adillatuhu*. Gema Insani .

Barlinti, Y. S. (2010). *Kedudukan Fatwa Dewan Syari'ah Nasional dalam Sistem Hukum Nasional di Indonesia*. Balitbang dan Diklat Kemenag RI.

Daud, Muhammad. (1996). *Hukum Islam : Pengantar Hukum Islam & Tata Hukum Islam Di Indonesia* . PT.Raja Grafindo Persada.

Fatah, R. A. (2010). *Analisis Fatwa Keagamaan dalam Fikih Islam*. bumi aksara.

Hammad, N. (2005). *al-Uqud al-Murakkabah fi al-Fiqh al-Islamiy*. Dar al-Qalam.

Hazm, I. (1999). *Muhalla*. Dar al-Kutub al-Ilmiah.

Hijrianto, D. (2010). *Pelaksanaan Akad Pembiayaan Ijarah Muntahiyah Bit Tamlik Pada Bank Muamalat Cabang Mataram* . Universitas Diponegoro .

Ibnu katsir. (2000). *tafsir quranil adzim* (1st ed.). Dar Ibnu Hazm.

Imrani, A. bin A. A. (2006). *al Uqud al Maaliyah al Murakkabah study fiqh Ta'shiliyah wa Tathbiqiyyah*. Dar Kunuz Elshabelia an Nasr wa Tausi'.

Karim, A. A. (2011). *Islamic Banking: Fiqh and Financial Analysis*. Rajawali Press.

KBBI. (1996). *Kamus Besar Bahasa Indonesia*. balai pustaka.

Khallaf, A. W. (1942). *Ilmu Usul Fikih* (8th ed.). Maktabah Dakwah alIslâmiyah.

Mahmashani, shubhy. (2003). *al-Nazariyyah al-Ammah lilmujibat wa al-Uqud fi al-Shari'ah al-ISlamiyyah*. Dar al Ilm Lilmalayin.

Ma'luf, L. (1986). *Al-Munjid fi Al-Luqhah wa al-a'lam*. Dar al-Mashriq.

Mubarok, J., & Hasanuddin. (2017). *Fikih Mu'amalah Maliyyah: Prinsip-Prinsip Perjanjian*. Simbiosa Rekatama Media.

Munawwir, Ahmad Warson. (1997). *Kamus Al-Munawwir Arab – Indonesia Terlengkap*. Pustaka Progresif.

Rofiq, A. (2012). *Fiqh Kontekstual; dari Normatif Ke Pemaknaan Sosial*. pustaka pelajar.

Saputra, H. dkk. (2014). *Himpunan Fatwa Keuangan Syari'ah DSN-MUI*. Erlangga.

Shadiq, M. A. (1990). *Al Gharar wa Atsaruhu fil Uqud fi Fiqh Islami*. Dar jill.

Warde, I. (2009). *Islamic Finance ter. Andriyadi Ramli*. pustaka pelajar.