

The Principle of *Ats-Tsabit bi Al-‘Urfi ka Ats-Tsabit bi Asy-Syar’i* in DSN-MUI Fatwa No. 117 on Sharia Fintech

Ryan Bianda

STIS Al Wafa Bogor, Indonesia

Email: ibnu.kaunda2020@gmail.com

Abstract

This research aims to describe and analyze the integration of the fiqh rule *Ats-Tsabit bi Al-‘Urfi ka Ats-Tsabit bi Asy-Syar’i* into the context of DSN-MUI Fatwa No. 117, which regulates Sharia-compliant financial technology (fintech). The study highlights the significance of combining *urf* (custom) and Sharia principles to create a comprehensive framework for enhancing Islamic financial products and services. This qualitative research uses a literature-based approach, collecting secondary data from fatwas, books, journals, and other relevant sources. The findings reveal that the application of the *Ats-Tsabit* rule not only reinforces the validity of modern financial transactions in compliance with Sharia but also supports the innovation needed to address the dynamic demands of society. The study also emphasizes the role of *urf* as a fundamental element in bridging traditional Islamic law with contemporary economic practices. These insights provide actionable recommendations for improving regulatory frameworks and fostering public trust in the Islamic fintech ecosystem. This research makes a significant contribution to the development of Islamic economic law by offering a sustainable approach to aligning technological advancements with Sharia principles.

Keywords: Financial Technology, Fatwa, DSN-MUI, Islamic Law, *Urf*.

Abstrak

Penelitian ini bertujuan untuk mendeskripsikan dan menganalisis integrasi kaidah fikih *Ats-Tsabit bi Al-‘Urfi ka Ats-Tsabit bi Asy-Syar’i* dalam konteks Fatwa DSN-MUI No. 117, yang mengatur teknologi keuangan berbasis prinsip syariah (fintech syariah). Penelitian ini menyoroti pentingnya mengombinasikan *urf* (adat) dengan prinsip syariah untuk menciptakan kerangka kerja yang komprehensif dalam meningkatkan produk dan layanan keuangan syariah. Penelitian ini menggunakan pendekatan kualitatif berbasis literatur, dengan pengumpulan data sekunder dari fatwa, buku, jurnal, dan sumber relevan lainnya. Hasil penelitian menunjukkan bahwa penerapan kaidah *Ats-Tsabit* tidak hanya memperkuat validitas transaksi keuangan modern sesuai syariah, tetapi juga mendukung inovasi yang dibutuhkan untuk memenuhi tuntutan masyarakat yang dinamis. Penelitian ini juga menekankan peran *urf* sebagai elemen fundamental yang menjembatani hukum Islam tradisional dengan praktik ekonomi kontemporer. Temuan ini memberikan rekomendasi praktis untuk meningkatkan kerangka regulasi dan membangun kepercayaan masyarakat terhadap ekosistem fintech syariah. Penelitian ini memberikan kontribusi yang signifikan terhadap pengembangan hukum ekonomi Islam dengan menawarkan pendekatan berkelanjutan untuk menyelaraskan kemajuan teknologi dengan prinsip syariah.

Kata Kunci: Teknologi Keuangan, Fatwa, DSN-MUI, Hukum Islam, *Urf*.

Introduction

The fact that the economic world always changes by following the times that make it easier for people to make transactions cannot be denied. Economic life, which was originally just a simple transaction, has now developed very rapidly, supported by the times. Along with the times, especially in the field of technology that has come into almost every human activity today. Also supported by the penetration of the Industrial Revolution 4.0 into various sectors and forcing each sector to adapt and innovate to adjust, the financial sector is no exception. Currently, many financial technology companies have emerged, more commonly referred to as fintech, which is a combination of the financial industry supported by technological advances (Hadrianto & Fataruba, 2022).

Islamic fintech in Indonesia has experienced significant growth in recent years. According to data from the Financial Services Authority (OJK) by 2022, the number of sharia fintech companies will reach more than 100 entities, with transaction value continuing to increase. This growth is driven by the increasing public need for financial services that comply with sharia principles, as well as technological advances that facilitate access to financial services. Firmansyah et al. (2024) noted that Islamic fintech offers various products such as financing, investment, and payment that are sharia-compliant, thus attracting a wider audience.

When a new style of transaction emerges in a society, the focus of the scholars is to ensure that there are no elements or actions that are prohibited by religion, such as *maisir*, mistreatment or *zhulm*, *gharar*, *haram* types, and *usury*, so that the transactions that occur are valid. To ensure this, the scholars perform *ijtihad* by examining the evidence derived from primary sources, namely the Qur'an and *hadith*, and continue by using the *qiyas* method or seeing if there is *ijma* or consensus of scholars related to the law. In practice, when a law wants to be applied and decided, it must also pay attention to the traditions and customs of a society, because religion wants that when a society applies a law, there will be a sense of comfort and calm because the applicable law is in accordance with the customs of a society.

In economics, the traditions or customs of a society also play an important role. For example, in the practice of online financing, there is one element that has begun to be replaced in society when conducting financing transactions, namely *shigat*. *Shigat al-'aqd* refers to the words or actions that express *ijab* (offer) and *qabul* (acceptance), such as "I sell" and "I buy". On today's growing digital platforms, including sharia fintech, fund borrowers express their consent to carry out fund lending transactions with a certain predetermined amount. The approval can be done by the borrower pressing the "okay" button or applying for a loan of funds

to Sharia fintech. The act of clicking "okay" or agreeing in a digital transaction is considered a sign of *ijab qabul*, so that the financing remains valid.

The emergence of new forms of transactions in the modern economic system requires new *ijtihad* from contemporary scholars to maintain the conformity of these transactions with sharia principles, the fact is that Indonesian Muslims often feel hesitant about modern economic transactions, especially those involving capital and financial markets. This is due to their limited understanding of how sharia concepts are applied in the context of such transactions. The role of clerical fatwas, particularly from the DSN MUI, becomes crucial in providing explanations and guidance (Sholeh, 2018). In this situation, the ummah needs the role of ulama in providing explanations about the laws related to these transactions.

A association that has a job to do explaining the law for contemporary transactions is Majelis Ulama Indonesia (MUI) as a representative of Indonesia government that gathering a member from a group, include NU (Nadhatul Ulama), Nadhatul Wathon, Persis, Muhammadiyah, ets. In this association has a DSN department or National Sharia Council, is a specific department to regulate financial activities based on islamic law that has known as the DSN Fatwa.

The fatwa itself obeys the rule based on Al-Qur'an and As-Sunnah. For the issue that not have an explanation in those resources because the needs of society that always maturing, using an *ijtihad* and analogy but still considering in the field of Islamic law (Rizaludin et al., 2023). The DSN-MUI fatwas are grounded in the primary sources of Islamic law, namely the Qur'an and As-Sunnah, ensuring their alignment with foundational Sharia principles. For contemporary issues that lack explicit guidance in these sources, the process of *ijtihad* and analogy is employed, enabling scholars to derive rulings that address evolving societal needs while maintaining adherence to Islamic jurisprudence.

In the context of the rapid development of Islamic fintech, this research is very important to provide a deeper understanding of the application of the *Ats-Tsabit* rule in DSN-MUI fatwa No. 117. By analysing the relationship between this rule and Islamic fintech practices, it is hoped that relevant solutions can be found to improve compliance with sharia principles while supporting innovation in financial services. This research also aims to provide recommendations for the development of better regulations in the future. Thus, this research is expected to make a significant contribution to the development of Islamic economic law.

The novelty of this research lies in its exploration of the integration between the fiqh rule *Ats-Tsabit bi Al- 'Urfi ka Ats-Tsabit bi Asy-Syar'i* and the operational framework of Islamic fintech as regulated by DSN-MUI Fatwa No. 117. While previous studies have largely

addressed the practical and technical dimensions of Islamic fintech, this study uniquely examines the jurisprudential principles that provide a foundational bridge between Sharia compliance and technological advancements. The emphasis on *urf* (custom) as a determinant factor in legal decisions offers a distinctive approach to resolving contemporary challenges in Sharia fintech practices, creating an innovative synergy between traditional Islamic law and modern financial systems.

In the context of the rapid development of Islamic fintech, the importance of this research is underscored by its ability to provide a comprehensive understanding of the *Ats-Tsabit* rule's application in DSN-MUI Fatwa No. 117. By addressing the intersection of *urf*-based rules and the technological demands of modern financial systems, this study highlights the adaptability and relevance of Sharia principles in the evolving fintech landscape. The findings aim to bridge theoretical frameworks with practical implementation, offering innovative recommendations for enhancing regulatory standards and promoting trust in Sharia-compliant financial services. This research is critical in shaping the future of Islamic economic law, ensuring its ability to remain both relevant and robust amidst the rapid technological advancements in the financial sector. The novelty of this research not only advances academic discourse but also provides actionable insights for policymakers, practitioners, and the broader Islamic fintech industry.

Methods

This research employs a qualitative approach with a normative juridical perspective, focusing on the descriptive analysis of the relationship between fiqh rules and economic transactions in Islamic financial organizations. The study primarily examines the jurisprudential principles outlined in DSN-MUI Fatwa No. 117/DSN-MUI/II/2018 and their application in Sharia-compliant fintech practices. The research relies on secondary data collected through literature studies, including fatwas, scholarly books, journal articles, and other relevant publications. Data analysis is conducted using qualitative descriptive methods, emphasizing the integration of the fiqh rule *Ats-Tsabit bi Al-'Urfi ka Ats-Tsabit bi Asy-Syar'i* into modern financial transactions. This approach enables a comprehensive understanding of how Islamic jurisprudence interacts with contemporary financial innovations, providing actionable insights for the advancement of Islamic economic law.

Definition of Rule *Ats-Tsabit bi Al-'Urfi ka Ats-Tsabit bi Asy-Syar'i*

The *Ats-Tsabit bi Al-'Urfi ka Ats-Tsabit bi Asy-Syar'i* rule in Islamic law is a principle that emphasises the importance of continuity and stability in a norm or law, both *shar'i* and

'*urf*. *Ats-Tsabit bi Al-'Urf* refers to the application of norms that have been accepted and recognised in society ('*uruf*), while *Ats-Tsabit bi Asy-Syar'i* relates to the laws established by Islamic law. In this context, this rule serves as a bridge between the social norms prevailing in society and the shar'i provisions that must be followed.

Fiqh itself is a arabic translation from qawaid fiqhiyyah or fiqh rules. As the etymologic, *qaidah* (قاعدة) as the word and *qawaid* (قواعد) as the plural has a meaning of basis, foundation, principle, the foundation that material, concrete, or sensory (some a house, abstract, non-sensory, and nonmaterial, example ushuluddin as the posit of Islam (Umar, 2008). As for the rule meaning based on its Indonesia Big Dictionary, is law principles, rule, proposition, and benchmark. Fikih (الفقه) means to know and understand. Fiqh has also explained Islamic law as sharia from the scientific arguments, that known use from terms of *fuqaha* or the jurist (Izzat, 1989). And by Al-Zarqā (2001), the general judgments that covering its parts called fiqh terms.

In Muamalah Maliyah eras, terms of qawa'id fiqhiyyah was an vital things. But as a time goes by, needs more rules that just its terms (Andiko, 2011). With the rapid development of science and technology and the ever-increasing demand from the public, new transaction models have emerged in various business sectors. In order to address the Islamic legal aspects related to these transactions, it is important to apply the rules of fiqh.

Islamic settlement and being able to solve real-life problems, of course, means using the rules of fiqh (Djazuli, 2006). One of the fiqh rules that is often used to resolve legal issues is:

الثابت بالعرف كالثابت بالشرع

"That which is established by custom is the same as that which is established by Shariah."

This rule is one of the rules included in the master rule group "*Al-'Adah Muḥakkamah*" (العادة محكمة). As is known, the rule of "*Al-'Adah Muḥakkamah*" is one of the five master rules, where each rule discusses its own topic. For example, the rule "*Al-Umūr bi Maqāṣidihā*" (الأموار بمقاصدها) discusses intention in activities, both in the context of muamalah (world affairs) and worship (religious affairs). Meanwhile, the rule "*Al-'Adah Muḥakkamah*" discusses the customs or habits of the community that can be one of the foundations of law, as long as they fulfill the existing provisions.

'*Urf* comes from the word 'arafa which is the derivation of the word al ma'ruf which means something that is known or recognized (Mumazziq, 2011). Meanwhile, '*urf* according to language is a good habit. According to the fuqaha, '*urf* is everything that has become a habit of the community and is done continuously, both in the form of words and deeds (Syihab, 1996).

So it can be understood, 'urf is a good word or action that has been popular and done by many people in society. This means that 'urf is a good habit that is done repeatedly by the community.

When viewed from the type of work, 'urf is divided into '*urf qawli* and '*urf fi'li*. And when viewed from the aspect of the quantity of the perpetrators, 'urf is divided into 'urf 'am and 'urf khas (Mumazziq, 2011). '*Urf qawli* refers to the use of a word, expression, or term that has been specifically accepted and interpreted within a community. For example, in Arab culture, the word "*walad*" specifically refers to boys, not girls. Meanwhile, '*urf fi'li* describes activities or actions that have become routine and social norms in society. For example, buying and selling transactions without explicitly mentioning the contract has become a common practice and is considered a custom that is difficult to avoid.

'*Urf 'am* is a form of work that has become widespread and does not recognize time limits, generational changes, or geographical location. Examples include cooking with a stove and public transport passengers mixing between men and women. While '*urf khas* is a kind of custom that applies in a certain region or group and is not seen in other communities. '*Urf* that can change and differ due to differences in place and time. Examples of this are traders setting off their receivables by writing them down in a special register without witnesses and the use of the word "vehicle" for *himar* in one country and horse in another (Sulaiman, 2004).

In general, there are only two categories of '*urf*, namely '*urf sahih* and '*urf fasid*, with the following explanation: '*Urf sahih* is anything that is well known to mankind that does not contradict the evidence of *shara'*. For example, the custom of a man proposing to a woman by giving her something as a gift, not as a dowry. '*Urf fasid* is 'urf that is bad and unacceptable because it contradicts *shara'*. For example, the custom of people consuming alcohol at a party (Andiko, 2011).

In practice, not all traditions and customs can be the basis of law. Therefore, the scholars have put forward some conditions and guidelines on how a tradition or custom of the local community can be used as an instrument in determining the law. Some of the conditions that must be fulfilled for a tradition to be considered valid as a legal basis include (al-Bughā, 1999):

1. The tradition does not contradict the Shari'ah, because if it does, then it is an '*urf fasid*, or corrupt tradition.
2. The tradition is general, or the majority, not just a few people.
3. The tradition is still in force at the time of the determination of a law.
4. There is no custom of speech or action that contradicts the tradition or custom that applies.

In practice, *Ats-Tsabit bi Al-'Urfi ka Ats-Tsabit bi Asy-Syar'i* serves as a reference to determine the validity of an action or contract performed by an individual or institution. This is

particularly relevant in the context of Islamic fintech, where technological innovations often come up against existing norms. By referring to the *ats-tsabit* rule, Islamic fintech players can ensure that the services they offer are in accordance with applicable sharia principles (Firmansyah et al., 2024).

This principle is very important in the development of Islamic law, especially in the face of changing social dynamics. For example, in the context of Islamic fintech, where technology and financial innovation are rapidly evolving, the *Ats-Tsabit* rule becomes a reference to determine whether these new practices are in accordance with existing sharia principles. According to Jamaludin (2023), a deep understanding of this rule can help stakeholders formulate policies that are in line with Islamic values and the needs of modern society.

The legal basis of the “*Ats-Tsabit*” rule can be found in various sources of Islamic law, including the Qur'an, Hadith, *ijma'* (agreement of scholars), and *qiyas* (analogy). The Qur'an and Hadith provide basic guidelines that are universal, while *ijma'* and *qiyas* provide room for adjusting the law to the times and conditions of society. For example, in the Qur'an, there are verses that emphasise the importance of justice and balance in economic transactions (QS. Al-Baqarah: 282), which can be used as a basis in determining the validity of Sharia fintech practices.

In addition, the Prophet Muhammad's hadith also provides many explanations of practices that have been recognised by society, which shows that the *ats-tsabit* rule is not only normative, but also practical. For example, the hadith that states ‘Every transaction that has no pleasure in it is invalid’ shows that transactions that have been accepted by the community must be respected and kept valid (Hidayatullah & Hidayati, 2021).

These legal sources also include the opinions of scholars and fatwas issued by religious institutions, such as the DSN-MUI, such as its Fatwa No. 117, for example, is one example of the application of the *Ats-Tsabit* rule in that contains the information of fintech sharia. This fatwa affirms that Islamic fintech services must be based on established sharia principles, while taking into account the *urf* norms prevailing in society (Firmansyah et al., 2024).

The link between the “*Ats-Tsabit*” rule and Islamic fintech is particularly relevant, given the many innovations that have emerged in this industry. Technology-based innovations often face challenges in terms of compliance with Shariah principles. Therefore, the application of the *Ats-Tsabit* rule can help in harmonising existing practices in society with sharia provisions. For example, in the context of financing, this rule can be used to assess the validity of contracts used in Islamic fintech transactions. Nurjaman and Witro (2021) explain that the application of this rule can provide a strong foundation for sharia-compliant financial practices.

In this circumstances, the Ats-Tsabit rule is not just a theory, but also a practice that must be implemented in daily life, especially in the economic sector. Thus, a good understanding of this rule will enable industry players to adapt to changes and remain within the sharia corridor. This is particularly relevant given the rapid growth of Islamic fintech in Indonesia, which requires quick and precise legal adjustments to remain in accordance with sharia principles (Wijayanti & Angraini, 2023).

Thus, the ats-tsabit rule serves not only as a tool to maintain legal certainty, but also as a bridge between tradition and innovation in Islamic law, especially in the face of the challenges faced by the Islamic fintech industry today. This shows that while technology continues to evolve, sharia principles remain the foundation of every practice, and the ats-tsabit rule becomes one of the main pillars in maintaining the integrity and sustainability of these practices.

Rule of Ats-Tsabit bi Al-‘Urfi ka Ats-Tsabit bi Asy-Syar’i in DSN-MUI Fatwa

The development of Islamic financial institutions in Indonesia is characterized by the active role of the Sharia Supervisory Board (DPS) in each financial institution. So it is necessary to establish an institution that will accommodate every problem faced by DPS practitioners, which, from one to another, have different problems, which will cause confusion among people and customers (Antonio, 2001). Therefore, MUI, as the umbrella organization of every Islamic institution and organization in the country, considers it necessary to establish a sharia council that will provide the same fatwa in handling the problems in each DPS and, of course, apply to all Islamic financial institutions (Tamam, 2021).

In 1990, in a workshop that discussed bank interest, the development of the people's economy through the establishment of banking institutions whose operational systems are based on sharia principles was discussed. At that time, scholars and Muslim scholars also planned the establishment of a national-scale sharia council in order to provide regulations in the form of fatwas in accordance with sharia provisions. This was also discussed in a workshop on sharia mutual funds in 2017. So at the workshop meeting, it was jointly agreed on the formation of the National Sharia Council (DSN). The agreement was followed up officially with the preparation of the DSN organizational structure in 1998 (Nafis, 2011).

Structurally, DSN is an institution under MUI. The establishment of DSN is intended to carry out the duties and authority of MUI in order to provide solutions related to issues related to Islamic economics, both those related to the operational system of Islamic banking and other matters. Directly, MUI can coordinate among the scholars to make an effective and efficient effort in responding to every problem faced by the people by stipulating a fatwa. In addition,

DSN is proactively expected to supervise, direct, and implement the values and principles of Islamic teachings for Islamic economic actors (Zamroni, 2018). Thus, the DSN-MUI is the highest authority for the determination of a fatwa in establishing sharia values in Indonesia.

The number of DSN-MUI fatwas as of October 2021 is 143, consisting of fatwas in the banking sector, the IKNB sector, the capital market sector, the business sector, and general fatwas. DSN Fatwas will continue to grow along with the development of Islamic economic transactions (Tamam, 2021). Fatwa DSN-MUI that meets the standardization of MUI in issuing fatwa decisions that contain four parts, namely weighing, remembering, paying attention, and stipulating. Fatwa is also chosen, at least in that it cites at least six fiqh rules as the basis for the argument in the determination of the DSN-MUI fatwa. Of the various fatwas that often use fiqh rules as a basis, the fiqh rule is: *الثابت بالعرف كالثابت بالشرع* (*Ats-Tsabit bi Al-'Urfi ka Ats-Tsabit bi Asy-Syar'i*). The fatwas that use this rule are Fatwa Number 54/DSN-MUI/X/2006 on Sharia Card, Fatwa Number 44/DSN-MUI/VII/2004 on Multijasa Financing, Fatwa Number 117/DSN-MUI/II/2018 on Fintech Sharia, and others. However, this discussion in the research focuses on the fatwa of fintech sharia.

DSN-MUI Fatwa No. 117 on fintech sharia is one of the efforts to regulate and provide guidelines for Indonesian fintech industry. In this fatwa, there is an emphasis on the importance of sharia principles that must be applied in every aspect of fintech services. The text of the fatwa underlines that every transaction must be done based on sharia provisions, including in terms of transparency, fairness, and avoiding elements of usury.

In analysing the fatwa text, it can be seen that the “*Ats-Tsabit*” rule is an important part in determining the validity of a transaction. *Ats-Tsabit*, which means ‘the constant’ in Arabic, emphasises that sharia law must be upheld and applied in the relevant context. In the context of fintech, this means that while the technology used may be new, the basic principles of sharia should still be the foundation. For example, in financing using murabaha contracts, there must be clarity regarding the price, goods, and payment terms, in accordance with applicable sharia principles (Firmansyah et al., 2024).

The fatwa also regulates the use of technology in transactions, which must be done in a way that does not lose the elements of fairness and transparency. In this context, the *Ats-Tsabit* rule serves to ensure that technological innovation does not contradict existing sharia principles. Thus, this fatwa also provides practical guidance for fintech industry players to operate within a clear sharia framework not just regulating from its legal aspects.

The relevance of the *Ats-Tsabit* rule in the context of Islamic fintech is vital, especially given the rapid dynamics and innovation in this industry. This rule serves as a guideline to

ensure that every innovation and service offered remains within the corridors of Islamic law. As the majority population is Muslim in Indonesia, the implementation of sharia principles in fintech is crucial to maintain public trust in financial services.

Statistics show that the growth of Islamic fintech in Indonesia has increased significantly. According to OJK's report, in 2022, the total transactions of Islamic fintech reached more than 10 trillion rupiah, an increase of 30% compared to the previous year (OJK, 2023). This growth indicates a high demand for financial services that comply with sharia principles. In this context, the *Ats-Tsabit* rule serves to keep the growth from compromising the existing sharia principles.

An example of the application of the *Ats-Tsabit* rule in Islamic fintech can be seen in peer-to-peer (P2P) financing platforms that offer usury-free financing services. In this case, the platform must ensure that every transaction is not only transparent but also fair to all parties involved. For example, if a borrower obtains financing, then there must be clarity regarding the fees charged and how payments will be made, so that there is no element of fraud or exploitation (Jamaludin, 2023).

Thus, the application of the *Ats-Tsabit* rule in DSN-MUI fatwa No. 117 shows that although technology and business practices change, sharia principles must remain an unwavering foundation. This also creates room for innovation that remains within the corridors of Islamic law, so that the Islamic fintech industry can develop in a sustainable and ethical manner.

Implication of DSN-MUI Fatwa No. 117 on on the Sharia Fintech Industry

The function of emersion the fintech is to supply convenience for running others sector that conventional system cant do (Bianda et al., 2023). The fintech phenomenon has developed in Indonesia because the traditional financial industry has things that are difficult for people, such as banking related to strict rules and certain areas that have not been reached by traditional banking. The presence of this fintech innovation starts with the shortcomings that still exist in the traditional financial industry. Making it a race for fintech innovation to provide solutions to the shortcomings of the traditional financial industry.

In 2008, fintech became a much-needed solution to the economic crisis. Fintech comes with facilities such as being accessible anytime and anywhere. Then it is easy to serve consumers because it can be done by utilizing existing technology. Then there's fintech, which is simple to use and transparent. The thing that was lacking in conventional banks before was their slow handling of money. But with the presence of fintech, this provides a solution for easy approval within 24 hours.

Tables and graphs, if any, are numbered consecutively with the table title and number placed above the table. For example:

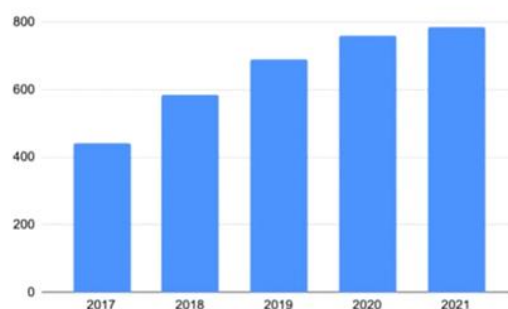


Figure 1. *Graph of the Development of the Number of Fintech Companies in Indonesia*

The graph above shows the development of the number of fintechs that have existed in Indonesia in the last 5 years. This data is taken from the Financial Services Authority (OJK) database. It can be seen that the number of fintech companies in Indonesia continues to increase every year. In 2017, the number was 440, and 2018 is 583 583. Then in 2019, it rose to 691. In 2020, the numbers broke through to 758, and the latest data states that in 2021, it will reach to 785 (Adji et al., 2023).

The development of fintech in Indonesia continues, especially since the emergence of the COVID-19 pandemic, which is still ongoing today. The impact of the pandemic has limited Indonesians' ability to do activities outside the home, so they tend to turn to online transactions, with fintech being the main solution. During the pandemic, Indonesians are using fintech to make online payments for electricity, water, and internet bills. With this fact in mind, there has been a 50% increase in buying and selling transactions and a 100% increase in lending distribution through fintech. However, it is important to note that most of the fintechs in circulation today are still conventional fintechs that do not comply with sharia principles. These conventional fintechs use the interest system (riba) in practice, which is contrary to Islamic principles that prohibit riba, as Allah SWT states in the Quran:

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَذَرُوا مَا بَقِيَ مِنَ الرِّبَا إِن كُنتُمْ مُؤْمِنِينَ

It Means: "O you who believe, fear Allah and leave behind the residue of usury if you are believers" (al-Baqarah: 278).

This situation encouraged the emergence of ideas and discourse on the birth of sharia fintech. The idea was finally born around 2018, and several sharia fintechs began to emerge that were expected to be solutions based on Islamic law. There are 127 companies registered

with the Financial Services Authority (OJK) as of September 30, 2019, which consists of 119 conventional and sharia. Even so, there are only about 13 companies that have licenses in Indonesia, while the rest are currently submitting their confirmation letters to the OJK institution. In the future, the presence of sharia fintech will probably continue to increase (Sumartini et al., 2021).

In order to achieve legal certainty in fintech, Bank Indonesia and the Financial Services Authority (OJK) must have regulations governing fintech specifically so that, in practice, there is legal certainty that protects users. So that the Indonesian Ulema Council issued a fatwa of the National Sharia Council of the Indonesian Ulema Council Number: 117/DSN-MUI/II/2018 concerning Information technology-based financing services based on sharia principles.

As stated in the fatwa Number: 117/DSN-MUI/II/2018 concerning Information technology-based financing services based on sharia principles, DSN-MUI decided to provide direction regarding the laws and mechanisms of Islamic fintech after considering several things, namely:

1. that information technology-based financing services for micro, small, and medium-scale businesses (MSMEs) in an effort to obtain access to funding quickly, easily, and efficiently are currently growing in Indonesia;
2. that the Indonesian people need an explanation of the provisions and legal restrictions related to information technology-based financing services based on sharia principles;
3. that based on the considerations in letters a and b, DSN-MUI considers it necessary to stipulate a fatwa on information technology-based financing services based on sharia principles to serve as guidelines

The explanation above provides a conclusion that the birth of sharia fintech is due to the encouragement of the needs of the Indonesian Muslim community for sharia fintech in accordance with sharia. Then in the fatwa, after explaining the consideration of the birth of the sharia fintech fatwa, the arguments that support the birth of this fatwa are described, whether the arguments are sourced from the Qur'an, Hadith, Ijma, or the opinions of scholars either quoted from kutub turats or Islamic conferences, followed by arguments from fiqh rules as reinforcement of existing arguments.

In the DSN-MUI fatwa No. 117/DSN-MUI/II/2018 concerning Financing Services Based on Information Technology Based on Sharia Principles. DSN-MUI lists eight fiqh rules, but the focus of discussion in this research is the rule that reads *Ats-Tsabit bi Al-'Urfi ka Ats-Tsabit bi Asy-Syar'i* (الثابت بالعرف كالثابت بالشرع). This rule gives an understanding that something that already exists in the midst of society because of customs and habits, is punished as something that applies based on sharia as long as it does not contradict the shar'i text. For

example, in terms of the amount of dowry or *mas kawin* received by a wife, sharia comes with a global explanation only, as in the word of Allah SWT:

وَأْتُوهُنَّ أَجُورَهُنَّ بِالْمَعْرُوفِ

It means: "*And give them their marriages according to what is proper*" (An-Nisa: 25).

In this verse, Allah SWT gives men freedom to determine the amount of *mahr* to be given when marrying a woman. This amount of *mahr* should be reasonable and adapted to the traditions and customs of each region. In the context of Islamic fiqh, this is known as "*mahr mitsli*", where the amount of dowry or *mahr* is adjusted to the "*mas kawin*" given to other women in similar situations. For example, if a man proposes to a woman without mentioning the amount of dowry, then the woman is entitled to receive an equivalent *mahr mitsli*.

From the example of the application of the above rules, it appears that the use of Islamic fintech seems to have become a tradition or custom, and this raises the question of whether it has been legitimately recognized by sharia. However, it is important to note that not all traditions or 'urf can be automatically recognized as a legal basis. The use of tradition or 'urf as a legal basis must fulfill the conditions previously explained, namely:

1. The tradition does not contradict the Shari'ah, because if it does, then it is an 'urf fasid, or corrupt tradition.
2. The tradition is general, or the majority, not just a few people.
3. The tradition is still in force at the time of the determination of a law.
4. There is no custom of speech or action that contradicts the prevailing tradition or custom.

The first requirement that must be met in order for an 'urf to have a legal basis is that it does not contradict the principles of sharia or is not included in the category of 'urf fasid. When we look at the existence of conventional fintech before the birth of sharia fintech, if it is considered urf, it certainly cannot be accepted as a legal basis because the mechanism of conventional fintech contains elements of usury that are clearly contrary to sharia. Therefore, it can be said that although this is considered urf, it falls into the category of 'urf fasid, which cannot be an instrument of determining the law.

The second condition needed for an 'urf to be used as a legal argument is that the 'urf or tradition must be generally accepted or recognized by the majority of the community. If we look at data from the Ministry of Communication and Information in August 2021, the number of fintech users reached 27.2 million. From this data, it can be concluded that the use of fintech in financial transactions, be they conventional or sharia-based, cannot be directly referred to as 'urf because it has not yet covered the entire community. However, from another perspective, considering that fintech is a common product such as savings and loans, the figure of 27.2

million fintech users can be considered sufficient to state that fintech has become 'urf or customary among that class or group of customers.

Necessity is a factor that plays an important role in this context, as reflected in the DSN-MUI's considerations recorded in its fatwa. The considerations state that Islamic fintech was developed in response to the needs of a portion of the Indonesian Muslim community who wish to use Islamic fintech services in their transactions.

DSN-MUI Fatwa No. 117 provides a clear legal framework and guidelines for the Islamic fintech industry in Indonesia. With this fatwa in place, sharia fintech industry players can develop their products and services with more confidence, as they meet recognised sharia principles. According to data from OJK, by 2022, the total transaction value of Islamic fintech will reach more than IDR 10 trillion, showing significant growth in recent years (OJK, 2023). This fatwa is expected to encourage more investment and innovation in this sector, as well as increase public confidence in sharia-compliant information technology-based financing services.

The implementation of this fatwa also has the potential to reduce the legal risks faced by Islamic fintech service providers. With legal certainty, businesses can focus more on developing innovative products and services. For example, some sharia fintech companies such as PT Dana Syariah Indonesia have utilised this fatwa to launch sharia-compliant financing products, such as murabahah and ijarah-based financing (Wijayanti & Angraini, 2023). This shows that the DSN-MUI fatwa No. 117 serves not only as a guideline, but also as a driver for the growth of the Islamic fintech industry in Indonesia.

However, despite this positive influence, the industry must also remain mindful of strict compliance and regulatory aspects. Violation of sharia principles may result in legal sanctions and damage the company's reputation. Therefore, it is important for industry players to continue to conduct education and training related to sharia principles and their application in fintech services. Thus, this fatwa can serve as a tool to improve the quality and integrity of Islamic fintech services in Indonesia.

Challenges and Opportunities Faced

Although the DSN-MUI fatwa No. 117 opens up many opportunities for the Islamic fintech industry, there are some challenges that need to be faced. One of the main challenges is the lack of public understanding of Islamic fintech products and services. According to research by Fauzi et al. (2023), only around 30% of the public understand the difference between conventional fintech and Islamic fintech. This shows that there is an urgent need to socialise

and educate the public so that they better understand the benefits and advantages of sharia-based financing services.

Another challenge is the increasing competition in the fintech market. With many new players entering the industry, Islamic fintech players must be able to differentiate themselves through innovation and service quality. For example, some companies have started adopting blockchain technology to improve transparency and transaction security, which is one of the advantages that can attract consumers (Anggoro et al., 2023). Therefore, it is important for industry players to continue to innovate and find new ways to fulfil customer needs.

On the other hand, this fatwa also creates opportunities for collaboration between Islamic fintech and other Islamic financial institutions. With collaboration, various parties can complement each other and strengthen their position in the market. For example, Islamic fintech can collaborate with Islamic banks to offer more diverse and attractive financing products for customers. This collaboration will not only increase competitiveness, but also expand the range of services to a wider community.

In conclusion, the DSN-MUI fatwa No. 117 has had a significant impact on the Islamic fintech industry in Indonesia, opening up new opportunities for innovation and growth. However, challenges such as lack of public understanding and intense competition remain to be faced. Therefore, collaboration and education are key to maximising the industry's potential.

Conclusion

This article aims to analyze the application of the principles of *Ats-Tsabit bi Al-'Urfi* and *Ats-Tsabit bi Asy-Syar'i* within the context of DSN-MUI Fatwa No. 117 on information technology-based financing services compliant with Sharia principles in Indonesia. The study demonstrates that these principles can be effectively applied to guide the development of Sharia fintech, ensuring that financial technology aligns with Islamic jurisprudence.

The findings highlight that while the DSN-MUI Fatwa No. 117 provides a solid regulatory framework, challenges remain in terms of public understanding and acceptance of Sharia fintech products and services. A lack of clear knowledge and awareness about how these services operate within the boundaries of Islamic law is one of the key obstacles to widespread adoption. This is compounded by the rapidly evolving nature of fintech, which often outpaces regulatory and educational efforts.

Despite these challenges, there are significant opportunities for the growth of Sharia-compliant fintech, especially in emerging markets where demand for ethical financial products is increasing. The integration of *Ats-Tsabit bi Al-'Urfi* and *Ats-Tsabit bi Asy-Syar'i* allows for

a more flexible application of Islamic jurisprudence, accommodating new developments in technology while preserving Sharia principles.

However, this study has limitations, particularly in its reliance on secondary data and literature reviews, which may not fully capture the real-world dynamics of Sharia fintech applications. Future research could explore empirical studies to assess the effectiveness of the DSN-MUI Fatwa in practice, as well as the perspectives of users and financial service providers in the Islamic fintech ecosystem.

Further studies should also examine the impact of public education and awareness campaigns on improving understanding of Sharia-compliant fintech products. Moreover, exploring comparative approaches in different Islamic countries could provide valuable insights into how similar regulatory frameworks are applied across diverse legal and economic environments.

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