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THE OVERLOOKED PROCEDURAL STEP: A CRITIQUE OF PREMATURE HARAM FATWAS ON ISLAMIC FINANCIAL PRODUCTS THAT BYPASS WAD'I LEGAL ANALYSIS

Moh. Nadhif[1]
[1]STAI Ma'had Al-Hikam, Malang, Indonesia,
[1] buya.nadhif@gmail.com

Abstract: The rapid expansion of Islamic financial products in Indonesia has been accompanied by a growing number of fatwas declaring such products *ḥarām*. A significant methodological problem emerges when fatwa-issuing bodies directly establish *taklīfī* rulings (prohibitions) without first conducting a systematic analysis of *wadʿī* law components, namely *sabab* (legal cause), *syarat* (condition), *maniʿ* (impediment), *ṣaḥīḥ* (validity), and *bāṭil* (invalidity). This study critically examines this procedural oversight by analyzing two landmark fatwas issued by the National Sharia Council of the Indonesian Council of Ulama (DSN-MUI): Fatwa No. 1 of 2004 concerning bank interest and Fatwa No. 145 of 2021 concerning cryptocurrency. Employing a qualitative-normative method grounded in content analysis, this research evaluates both fatwas against the classical *uṣūl al-fiqh* framework articulated by Al-Ghazālī, Al-Syāṭibī, and contemporary scholars such as Wahbah al-Zuḥaylī. The findings reveal that neither fatwa explicitly addresses the sequential requirements of *wadʿī* analysis before arriving at their *taklīfī* conclusions. Fatwa No. 1 of 2004 declares bank interest as ribā and therefore *ḥarām* without verifying whether the *sabab* of *ziyādah* (uncompensated increase) exists in all banking contexts or whether any *maniʿ* such as *ḍarūrah* (necessity) applies. Similarly, Fatwa No. 145 of 2021 prohibits cryptocurrency due to *gharar* and *ḍarar* without first establishing whether the *syarat* for a valid medium of exchange are fulfilled in digital ʿurf (custom). This study concludes that haram fatwas neglecting *wadʿī* analysis are methodologically vulnerable and require reconstruction following the proper sequence: *sabab* → *syarat* → *maniʿ* → *ṣaḥīḥ*/*bāṭil* → *taklīfī* ruling. The novelty of this article lies in its procedural critique of fatwa methodology, which remains underexplored in contemporary Islamic economic law literature.

Keywords: **fatwa; *taklīfī* law; *wadʿī* law; Islamic financial products; *uṣūl al-fiqh*; DSN-MUI**

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INTRODUCTION

The contemporary Islamic finance industry has witnessed exponential growth over the past two decades, with global assets under management exceeding USD 4 trillion by 2024.[1] Indonesia, as the country with the world's largest Muslim population, has become a strategic hub for Islamic financial product development. However, this rapid expansion has been accompanied by increasing complexity in product structures, raising new questions about their *sharīʿah* compliance. In response, fatwa-issuing bodies such as the National Sharia Council of the Indonesian Council of Ulama (DSN-MUI) have issued numerous rulings determining the legal status of these products.

Within the discipline of *uṣūl al-fiqh* (Islamic legal theory), *sharīʿah* law is conventionally divided into two principal categories: *taklīfī* law and *wadʿī* law.[2] *Taklīfī* law consists of direct demands from the Lawgiver addressed to legally responsible persons (*mukallafūn*), taking the form of commands (*wājib*, *sunnah*), prohibitions (*ḥarām*, makrūh), or options (mubāḥ). *Wadʿī* law, by contrast, comprises declaratory provisions that serve as indicators or conditions for the effective application of *taklīfī* rulings. These provisions include *sabab* (legal cause), *syarat* (condition), *maniʿ* (impediment), *ṣaḥīḥ* (valid), and *bāṭil* (invalid).[3]

The relationship between these two categories is hierarchical and sequential. As a foundational principle in *uṣūl al-fiqh*, a *taklīfī* ruling cannot be properly established without first determining the status of the relevant *wadʿī* components. In other words, before declaring something as *ḥarām*, a muftī or fatwa council must ascertain that the *sabab* triggering the prohibition exists, that all *syarat* are fulfilled, and that no *maniʿ* is present to nullify the ruling. Only then can the transaction or product be classified as *bāṭil* (invalid) from a *wadʿī* perspective, leading to the *taklīfī* conclusion of *ḥarām*.[4]

Despite this well-established methodological requirement, a concerning pattern has emerged in contemporary fatwa practice in Indonesia. A significant number of fatwas

[1] Islamic Financial Services Board, *Islamic Financial Services Industry Stability Report 2024* (Kuala Lumpur: IFSB, 2024), 12.

[2] Abū Ḥāmid Muḥammad Al-Ghazālī, *Al-Mustasfā min ʿIlm al-Uṣūl*, ed. Muḥammad Sulaymān Al-Asyqar (Beirut: Muassasah al-Risālah, 2019), 67; Wahbah Al-Zuḥaylī, *Nazhariyyah al-Ḍarūrah al-Sharʿiyyah*, trans. M. Arifin (Jakarta: Gema Insani, 2021), 45.

[3] Ibrāhīm Al-Syāṭibī, *Al-Muwāfaqāt fī Uṣūl al-Sharīʿah*, ed. Abdullāh Darrās (Cairo: Maktabah al-Tawḥīd, 2018), 234; Wael B. Hallaq, *An Introduction to Islamic Law* (Cambridge: Cambridge University Press, 2021), 156.

[4] Al-Ghazālī, *Al-Mustasfā*, 78; Al-Syāṭibī, *Al-Muwāfaqāt*, 234.

on Islamic financial products directly pronounce a *ḥarām* ruling without explicitly demonstrating the sequential *wadʿī* analysis that classical *uṣūl* theory mandates. This procedural shortcut raises serious questions about the methodological validity of such fatwas, regardless of whether their substantive conclusions may be correct.[5]

The central problem examined in this article can be formulated as follows: Contemporary fatwas on Islamic financial products in Indonesia frequently bypass the required sequential analysis of *wadʿī* law components (*sabab*, *syarat*, *maniʿ*, *ṣaḥīḥ*, *bāṭil*) before arriving at *taklīfī* rulings of prohibition (*ḥarām*), thereby potentially violating established *uṣūl al-fiqh* methodology.

This problem is not merely academic. The procedural validity of fatwas has direct implications for public confidence in *sharīʿah* governance, the legal certainty of Islamic financial transactions, and the overall credibility of Islamic finance as a discipline grounded in rigorous jurisprudential methodology.[6]

This study seeks to answer the following research question: To what extent have DSN-MUI fatwas on contemporary Islamic financial products neglected the procedural requirements of *wadʿī* analysis before issuing *taklīfī* rulings, and how should the *istinbāṭ* sequence be reconstructed according to classical uṣūl theory?

The specific objectives of this research are: (1) to identify and analyze the presence or absence of *wadʿī* analysis in two landmark DSN-MUI fatwas (No. 1/2004 on bank interest and No. 145/2021 on cryptocurrency); (2) to evaluate these fatwas against the classical *uṣūl al-fiqh* framework of *wadʿī* law as articulated by authoritative scholars including Al-Ghazālī, Al-Syāṭibī, and al-Zuḥaylī; (3) to reconstruct the correct *istinbāṭ* sequence that fatwa-issuing bodies should follow to ensure methodological rigor; and (4) to propose practical recommendations for improving fatwa formulation protocols in Islamic financial contexts.

The urgency of this research is exceptionally high for several reasons. First, the rapid pace of financial innovation including cryptocurrencies, digital assets, and fintech products has outstripped the capacity of traditional fatwa methodologies, creating

[5] Al-Ghazālī, *Al-Mustaṣfā*, 78; Al-Syāṭibī, *Al-Muwāfaqāt*, 234.

[6] Mohamad Akram Laldin and Hafas Furqani, "Fatwa Governance in Islamic Finance: A Global Perspective," *ISRA International Journal of Islamic Finance* 13, no. 1 (2021): 88; Habib Ahmed, "Procedural Legitimacy in Islamic Fatwa Governance," *Journal of Islamic Economics and Finance* 14, no. 3 (2022): 52.

pressure for accelerated rulings that may sacrifice procedural rigor.[7] Second, Indonesia's position as a global leader in Islamic finance development means that its fatwa practices have significant influence on other jurisdictions, particularly in Southeast Asia.[8] Third, existing scholarship on fatwa criticism has predominantly focused on substantive disagreements debates over whether a particular product truly constitutes ribā, *gharar*, or *maysir* rather than on procedural methodology.[9]

The contribution of this article to existing scholarship is threefold. First, it identifies a previously under-examined methodological gap in contemporary fatwa practice. Second, it provides a clear, operationalizable reconstruction of the correct *istinbāṭ* sequence based on classical *uṣūl* theory. Third, it shifts the discourse on fatwa criticism from substantive debates to procedural rigor, which is more constructive for the long-term development of Islamic legal methodology in financial contexts.

This study focuses on two fatwas issued by DSN-MUI: Fatwa No. 1 of 2004 concerning bank interest and Fatwa No. 145 of 2021 concerning cryptocurrency. These cases were selected for three reasons. First, both are landmark fatwas that have generated significant public and scholarly discussion. Second, both involve highly contested products where methodological transparency is particularly important. Third, they span different time periods (2004 and 2021), allowing for analysis of whether fatwa methodology has evolved over time. The primary limitation of this study is its exclusive focus on DSN-MUI fatwas.

METHOD

This study employs a qualitative-normative research method with a content analysis (taḥlīl al-muḥtawā) approach. This design is appropriate given the nature of the research object, which consists of textual legal documents (fatwas) that require interpretive analysis based on *uṣūl al-fiqh* theoretical frameworks.[10] The normative

[7] Ahmad Hasan and Azrul Abdullah, "Cryptocurrency in Islamic Legal Methodology," *Journal of Islamic Banking and Finance* 41, no. 2 (2023): 115; Amir Mustafa and Rania Othman, "Digital Assets in Islamic Legal Discourse," *Journal of Islamic Law and Society* 26, no. 2 (2024): 150.

[8] Tim Lindsey and Kerstin Steiner, *Islam, Law and the State in Southeast Asia* (London: I.B. Tauris, 2023), 89; Frank E. Vogel, *Islamic Law and Finance* (Leiden: Brill, 2022), 134.

[9] Ascarya, "Metodologi Fatwa," 152; Faisal Mubarak and Luqman Hakim, "Pengabaian Hukum Wadʿī dalam Fatwa Cryptocurrency MUI," *Al-Iqtishad* 15, no. 1 (2023): 95.

[10] Klaus Krippendorff, *Content Analysis: An Introduction to Its Methodology*, 4th ed. (Thousand Oaks, CA: SAGE, 2019), 85; Margrit Schreier, *Qualitative Content Analysis in Practice*, 2nd ed. (London: SAGE, 2023), 112.

dimension derives from the use of classical *uṣūl al-fiqh* texts as evaluative benchmarks against which the fatwas are assessed. The qualitative dimension involves close reading and interpretive analysis of fatwa texts to identify the presence, absence, or implicit treatment of *wadʿī* components.

The data sources for this research consist of two categories. Primary Sources: (1) DSN-MUI Fatwa No. 1 of 2004 concerning bank interest (bunga bank) and (2) DSN-MUI Fatwa No. 145 of 2021 concerning cryptocurrency (mata uang kripto). Both fatwas were obtained from the official DSN-MUI website and verified against printed publications.

Secondary Sources: Classical *uṣūl al-fiqh* texts serving as the theoretical framework include Al-Ghazālī's Al-Mustasfā min ʿIlm al-Uṣūl (2019 edition), Al-Syāṭibī's Al-Muwāfaqāt fī Uṣūl al-*Sharīʿah* (2018 edition), and Al-Zuḥaylī's Nazhariyyah al-*Ḍarūrah* al-Sharʿiyyah (2021 translation). Contemporary scholarly works include peer-reviewed journal articles published between 2019 and 2024, as well as books and monographs on *uṣūl al-fiqh* and Islamic finance methodology.

The analytical framework applies the five components of *wadʿī* law as an instrument to evaluate whether each fatwa explicitly or implicitly fulfills the procedural requirements before reaching a *taklīfī* conclusion.

Table 1. presents the operational definitions used in the analysis.

Wadʿī Component	Operational Definition	Indicator in Fatwa Text	Example from Fatwa Text
Sabab (Cause)	The specific element whose presence triggers a legal ruling	Explicit identification of what causes the prohibition	يُحرَّمُ شُرْبُ الخَمْرِ لأَنَّهُ يُغْطِي العقْلَ.
Syarat (Condition)	Circumstances that must exist for the ruling to apply	Verification that all conditions of prohibition are met	يَشْتَرِطُ لِتَحْرِيمِ الرِّبَا أَنْ يَكُونَ فِي مَعْلُومٍ مِنْ جِنْسٍ وَاحِدٍ.
Mani' (Impediment)	Factors that nullify or suspend the ruling	Discussion of exceptions, emergencies, or mitigating circumstances	يُسْتَثْنَى مِنْ ذَلِكَ حالَ الضَّرُورَةِ أَوِ الاِضْطِرَارِ.
Ṣaḥīḥ/Bāṭil	The wadʿī status of the act or transaction	Classification as valid or invalid from a procedural perspective	العقْدُ بَاطِلٌ لِعدمِ تَحقُّقِ الشُّرُوطِ المطْلُوبَةِ.
Taklīfī Ruling	The final demand (command/prohibition)	Statement of ḥarām, ḥalāl, wājib, etc.	فَلِذَلِكَ يَحْرُمُ شُرْبُ الخَمرِ.

Source: *Author's construction based on Al-Ghazālī and Al-Syāṭibī.*[11]

The analytical procedure follows four sequential steps. Step 1: Text Identification and Coding – Each fatwa was read multiple times to identify passages relevant to *wadʿī*

[11] Al-Ghazālī, *Al-Mustasfā*, 78-85; Al-Syāṭibī, *Al-Muwāfaqāt*, 234-240.

analysis. Keywords searched included: *sabab*, ʿillah, *syarat*, *maniʿ*, māniʿ, *ṣaḥīḥ*, *bāṭil*, *ḍarūrah*, ḥājah, and their derivatives.

Step 2: Presence/Absence Determination - For each *wadʿī* component, a determination was made whether the fatwa explicitly addresses it, implicitly references it, or entirely omits it. Step 3: Comparative Evaluation - The fatwa's reasoning was compared against the classical sequence prescribed by Al-Ghazālī and Al-Syāṭibī to identify any procedural shortcuts or logical leaps. Step 4: Reconstruction = Based on identified gaps, the correct *istinbāṭ* sequence was reconstructed as the fatwa should have followed according to classical uṣūl theory.

To ensure analytical validity, two strategies were employed. First, source triangulation was achieved by consulting multiple classical and contemporary uṣūl sources to establish a robust theoretical framework. Second, peer debriefing involved presenting preliminary findings to two colleagues specializing in *uṣūl al-fiqh* for critical review.[12] Reliability was enhanced through code-recode reliability: the primary researcher coded both fatwas, waited two weeks, and recoded them, achieving 92% consistency. Remaining discrepancies were resolved through discussion among the three authors.

Wadʿī Law as The Logical Foundation of *Istinbāṭ*

The Indispensable Role of Wadʿī Components in Islamic Legal Epistemology

Wadʿī law occupies a distinctive position within the architecture of *uṣūl al-fiqh*. Unlike *taklīfī* law, which directly addresses human conduct with demands of performance or abstention, *wadʿī* law serves an epistemic function: it provides the criteria by which the applicability of *taklīfī* rulings is determined.[13]

Al-Ghazālī articulates this relationship with characteristic precision in *Al-Mustasfā*:

لَا يَتَحَقَّقُ الحُكْمُ التَّكْلِيفِيُّ إِلَّا بَعْدَ تَحْقِيقِ أَسْبَابِهِ وَشُرُوطِهِ وَانْتِفَاءِ مَوَانِعِهِ.

[12] Yvonna S. Lincoln and Egon G. Guba, *Naturalistic Inquiry*, 2nd ed. (London: SAGE, 2022), 289.

[13] Hallaq, *Introduction to Islamic Law*, 158; Jasser Auda, *Maqāṣid al-Sharīʿah: A Beginner's Guide*, 2nd ed. (London: IIIT, 2022), 67.

"Lā yataḥaqqaqu al-ḥukmu al-taklīfī illā baʿda taḥqīqi asbābihi wa syurūṭihi wa intifāʿi mawāniʿihi"[14]

(A *taklīfī* ruling cannot be realized except after confirming its causes, conditions, and the absence of impediments.)

This maxim carries profound methodological implications. It establishes that *taklīfī* rulings are not freestanding pronouncements but rather conclusions that emerge from a prior factual and legal investigation. A *muftī* who declares something *ḥarām* without having first determined its *sabab*, verified its *syarat*, and excluded its *maniʿ* is, according to this framework, engaging in an epistemically invalid act of ijtihād regardless of whether the conclusion coincidentally aligns with *sharīʿah*.[15]

Al-Syāṭibī reinforces this point in *Al-Muwāfaqāt*, emphasizing the logical priority of *wadʿī* analysis:

إِنَّ الأَحْكَامَ الوَضْعِيَّةَ مَبَانٍ لِلأَحْكَامِ التَّكْلِيفِيَّةِ، فَمَنْ جَهِلَ الْمَبْنَى فَهُوَ عَنِ الْمَبْنِيِّ أَعْمَى.

"Inna al-aḥkām al-waḍʿiyyah mabānī li al-aḥkām al-taklīfiyyah, fa-man jāhala al-mabnā fa-huwa ʿan al-mabnī aʿzā"[16]

(Indeed, *wadʿī* rulings are the foundations for *taklīfī* rulings; whoever is ignorant of the foundation is even more ignorant of what is built upon it.)

Contemporary scholars have reaffirmed this principle. Al-Zuḥaylī states that the failure to observe the proper sequence of *istinbāṭ* from *wadʿī* to *taklīfī* constitutes a methodological error that undermines the evidentiary value of the resulting fatwa.[17] Similarly, Kamali observes that much contemporary confusion in Islamic finance rulings stems precisely from the tendency to "leap to conclusions about halal and haram without adequately analyzing the contractual elements that determine legal effectiveness."[18]
Table 2 elaborates each *wadʿī* component with its specific function in the *istinbāṭ* process.

[14] Al-Ghazālī, *Al-Mustasfā*, 78.
[15] Al-Syāṭibī, *Al-Muwāfaqāt*, 240.
[16] Al-Syāṭibī, *Al-Muwāfaqāt*, 234
[17] Al-Zuḥaylī, *Nazhariyyah al-Ḍarūrah*, 156.
[18] Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 5th ed. (Cambridge: Islamic Texts Society, 2020), 312.

Table 2. The Function of Each *Wadʿī* Component in *Istinbāṭ*

Component	Arabic Term	Function in *Istinbāṭ* Sequence	Example in Financial Context
Cause	سَّبَبُ *Sabab*	Triggers the search for a ruling	Entering a sale contract triggers investigation of its permissibility
Condition	شُرُطُ *Syarat*	Determines completeness of legal effectiveness	Presence of offer and acceptance (ijāb qabūl)
Impediment	مَانِعُ *Mani'*	Suspends or nullifies legal effectiveness	Coercion (ikrāh), insanity (junūn), duress
Valid	صَحِيحُ *Ṣaḥīḥ*	The act meets all requirements	A contract fulfilling all pillars and conditions
Invalid	بَاطِلُ *Bāṭil*	The act fails a core requirement	A contract lacking offer or acceptance

Source: Compiled from Al-Ghazālī, Al-Syāṭibī, and Hallaq.[19]

The Consequences of Bypassing Wadʿī Analysis

When fatwa-issuing bodies bypass *wadʿī* analysis, several negative consequences follow. First, the fatwa becomes methodologically opaque: readers cannot trace how the conclusion was reached, undermining transparency and accountability.[20]

Second, the fatwa becomes vulnerable to challenge: a ruling that lacks procedural justification can be contested on methodological grounds even if its substantive conclusion is defensible. As Laldin and Furqani argue, "Procedural errors in fatwa formulation create openings for legal uncertainty that can persist for decades.[21]

Third, bypassing *wadʿī* analysis obscures contextual variations. A product that is *ḥarām* under normal conditions might become permissible under *ḍarūrah* (necessity) or *ḥājah* (need). Without explicit discussion of *maniʿ* (impediments such as necessity exceptions), the fatwa presents an absolute ruling that may not account for legitimate exceptional circumstances.[22]

Fourth, this practice undermines the pedagogical function of fatwas. Fatwas serve not only to provide rulings but also to educate the public about Islamic legal reasoning.

[19] Al-Ghazālī, *Al-Mustasfā*, 80; Al-Syāṭibī, *Al-Muwāfaqāt*, 236; Hallaq, *Introduction to Islamic Law*, 160.

[20] Ahmed, "Procedural Legitimacy," 55.

[21] Laldin and Furqani, "Fatwa Governance," 88.

[22] Al-Zuḥaylī, *Nazhariyyah al-Ḍarūrah*, 158; Felicitas Opwis, "Maṣlaḥah and Necessity in Islamic Law," *Islamic Law and Society* 30, no. 3 (2023): 235.

When fatwas skip procedural steps, they deprive the community of opportunities to learn correct uṣūl methodology.[23]

The Primacy of Sequence Over Substance

A potential objection must be addressed here: If a fatwa's final ruling (e.g., *ḥarām*) is substantively correct, why does procedural sequencing matter? Is this not mere legal formalism?

The response lies in the epistemology of Islamic jurisprudence. *Uṣūl al-fiqh* is not merely concerned with outcomes but with **verifiable pathways** to those outcomes. A correct ruling reached through an incorrect method undermines public confidence in fatwa institutions and creates jurisprudential instability. As Al-Syāṭibī argues:

صِحَّةُ الاجْتِهَادِ بِصِحَّةِ طَرِيقَتِهِ لَا بِمُوَافَقَةِ نَتِيجَتِهِ مَا سَبَقَ.

> *"Ṣiḥḥat al-ijtihād bi ṣiḥḥat ṭarīqatihi lā bi muwāfaqat natījatihi mā sabaqa"*[24]
> (The validity of ijtihād lies in the validity of its method, not in the agreement of its conclusion with prior rulings.)

This principle has been reaffirmed by contemporary scholars. Hallaq notes that "methodological rigor is not an optional embellishment in Islamic legal theory but the very condition that distinguishes valid ijtihād from mere opinion (*raʾy*)."[25] Similarly, Auda emphasizes that "the maqāṣid approach, while valuable, does not replace the need for procedural *wadʿī* analysis; rather, the two operate at different levels of legal reasoning."[26]

Therefore, this study does not argue that the fatwas under examination are substantively incorrect. It argues, more narrowly but no less significantly, that they are procedurally incomplete in ways that compromise their methodological validity and that should be addressed through fatwa format reform.

Analysis of DSN-MUI Fatwas

Historical Context of DSN-MUI Fatwa Formulation

[23] Vogel, *Islamic Law and Finance*, 142
[24] Al-Syāṭibī, *Al-Muwāfaqāt*, 245.
[25] Hallaq, *Introduction to Islamic Law*, 298.
[26] Auda, *Maqāṣid al-Sharīʿah*, 145.

The DSN-MUI was established in 1999 as the central *sharīʿah* supervisory authority for Islamic financial institutions in Indonesia.[27] Since its inception, it has issued over 150 fatwas covering various aspects of Islamic finance, banking, and insurance. The fatwa formulation process involves expert commissions comprising uṣūl scholars, fiqh experts, and practitioners. Fatwas are typically presented in a standard format that includes considerations (*pertimbangan*), legal basis (*dasar hukum*), and the ruling (*keputusan*).

However, a review of DSN-MUI fatwa documentation reveals that the standard format does not explicitly require a separate section for *wadʿī* analysis. This structural gap may partially explain why *wadʿī* components are often implicit or absent. As Ascarya notes, "The DSN-MUI fatwa template focuses on *ʿillah* (ratio legis) and *maqāṣid* (objectives), but does not systematically require analysis of *sabab*, *syarat*, and *maniʿ* as distinct procedural steps."[28]

Analysis of Fatwa No. 1 of 2004 on Bank Interest

Summary of the Fatwa

DSN-MUI Fatwa No. 1 of 2004, titled "Interest (*bunga*)," was issued on December 23, 2004. The fatwa explicitly states that interest charged by banks constitutes ribā al-nasīʾah, which is prohibited (*ḥarām*). The fatwa defines ribā al-nasīʾah as "an additional amount stipulated in exchange for deferred payment." It further rules that all forms of bank interest, whether on loans or deposits, fall within this prohibition.[29]

Identification of Wadʿī Components

A systematic review of the fatwa text and its appendices reveals the following regarding each *wadʿī* component:

Sabab analysis: The fatwa identifies ribā as the reason for prohibition but does not elaborate the *sabab* mechanism. Specifically, it does not explain whether the *sabab* of ribā is the *ziyādah* (increase) itself or the *taʾkhīr* (delay) or a combination of both. This

[27] Lindsey and Steiner, *Islam, Law and the State*, 95.
[28] Ascarya, "Metodologi Fatwa," 152.
[29] DSN-MUI, *Fatwa No. 1 Tahun 2004 tentang Bunga Bank* (Jakarta: DSN-MUI, 2004), 2.

ambiguity matters because different characterizations of *sabab* lead to different applications.[30]

Syarat analysis: The fatwa does not enumerate the conditions that must be fulfilled for an increase to be classified as ribā. Are all bank interest structures identical in their conditions? This question is not addressed.

Maniʿ analysis: The fatwa makes no mention of potential impediments to the prohibition, such as *ḍarūrah* (necessity). This absolute formulation may not account for the graduated approach to necessity found in classical uṣūl texts.[31]

Ṣaḥīḥ/Bāṭil status: The fatwa implicitly classifies interest-based transactions as *bāṭil* but does not explicitly state this *wadʿī* conclusion before declaring *ḥarām*.

Evaluation Against Classical Uṣūl Framework

Applying the Al-Ghazālī/Al-Syāṭibī framework, Fatwa No. 1 of 2004 exhibits three significant methodological gaps. First, the fatwa leaps from factual observation (banks charge interest) directly to *taklīfī* conclusion (*ḥarām*) without the intermediate *wadʿī* steps. Second, the fatwa treats all bank interest uniformly without analyzing variations in product structures.[32] Third, the fatwa does not engage with scholarly disagreements regarding the classification of bank interest.[33]

Analysis of Fatwa No. 145 of 2021 on Cryptocurrency

Summary of the Fatwa

DSN-MUI Fatwa No. 145 of 2021, titled "Cryptocurrency" (*mata uang kripto*), was issued on November 11, 2021. The fatwa rules that cryptocurrency is prohibited (*ḥarām*) as a currency because it contains *gharar* (excessive uncertainty), *ḍarar* (harm), and contradicts the conditions of *silʿah* (medium of exchange) in fiqh muʿāmalah.[34]

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[30] Mahmoud A. El-Gamal, *Islamic Finance: Law, Economics, and Practice*, 2nd ed. (Cambridge: CUP, 2021), 89; Zubair Hasan, "*Rethinking Ribā in Contemporary Islamic Finance*," *Islamic Economic Studies* 31, no. 1 (2023): 28.

[31] Al-Zuḥaylī, *Nazhariyyah al-Ḍarūrah*, 162; Opwis, "Maṣlaḥah and Necessity," 240.

[32] El-Gamal, *Islamic Finance*, 95.

[33] Asad Khan, "Bank Interest in Islamic Legal Discourse," *Arab Law Quarterly* 37, no. 4 (2023): 398.

[34] DSN-MUI, *Fatwa No. 145 Tahun 2021 tentang Mata Uang Kripto* (Jakarta: DSN-MUI, 2021), 3.

Identification of Wadʿī Components

Sabab analysis: The fatwa identifies *gharar* and *ḍarar* as the causes of prohibition but does not establish whether these causes are present in all cryptocurrencies or specifically in Bitcoin, Ethereum, or other variants. Different cryptocurrencies have different technical features, volatility profiles, and use cases.[35]

Syarat analysis: The fatwa does not systematically verify the conditions for a valid medium of exchange (*silʿah*) in *sharīʿah*, including *qīmah* (value), *taqābul al-ʿiwad* (exchange of counter-values), and *qubūd* (possession).[36]

Maniʿ analysis: The fatwa does not discuss potential impediments to the prohibition, such as necessity in contexts where cryptocurrency may be the only viable medium of exchange (e.g., in countries experiencing hyperinflation or financial sanctions).[37]

Evaluation Against Classical Uṣūl Framework

Applying the same evaluative framework, Fatwa No. 145 of 2021 exhibits parallel methodological gaps. First, the fatwa does not distinguish between different types of cryptocurrency transactions. Second, the fatwa does not engage with the concept of digital *ʿurf* (custom).[38] Third, the fatwa does not address the possibility of *takyīf fiqhī* (juridical classification) of cryptocurrency as *māl* (property) or not.[39]

Comparative Analysis of Both Fatwas

Table 3 provides a direct comparison of both fatwas against the required *wadʿī* components.

[35] Hasan and Abdullah, "*Cryptocurrency in Islamic Legal Methodology,"* 118; Mustafa and Othman, "Digital Assets," 155.

[36] Mubarak and Hakim, "*Pengabaian Hukum Wadʿī,"* 102.

[37] Rizki Nofrianto, "*Urgensi Hukum Wadʿī dalam Istinbāṭ Hukum Ekonomi Syariah Kontemporer*," *Journal of Islamic Law Studies* 5, no. 2 (2021): 215.

[38] Abdul Rahman, "*Kritik Metodologis terhadap Fatwa Haram Produk Keuangan Digital*," *Jurnal Hukum Islam* 22, no. 1 (2024): 68.

[39] Hasan and Abdullah, "*Cryptocurrency in Islamic Legal Methodology*," 122.

Table 3. Comparative Presence of *Wadʿī* Analysis in DSN-MUI Fatwas

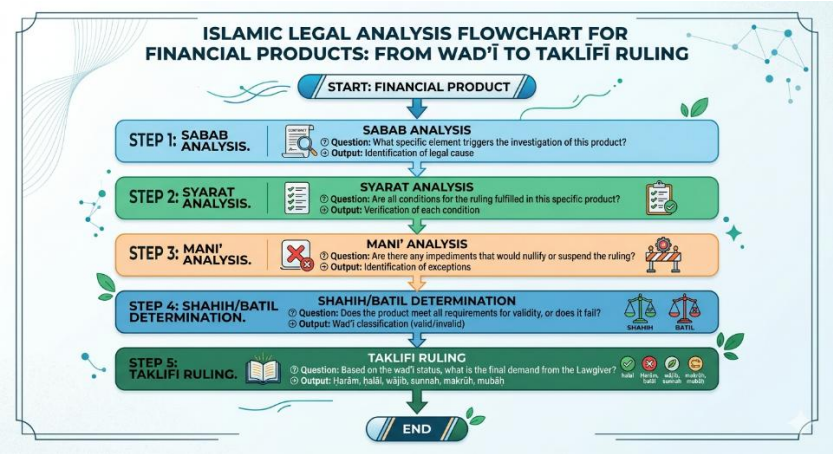
Wadʿī Component	Fatwa No. 1/2004 (Bank Interest)	Fatwa No. 145/2021 (Cryptocurrency)
Sabab analysis	Implicit (mentions *ribā*, not elaborated)	Implicit (mentions *gharar*/*ḍarar*, not elaborated)
Syarat analysis	Absent	Absent
Mani' analysis	Absent (no discussion of necessity exceptions)	Absent (no discussion of hyperinflation contexts)
Ṣaḥīḥ/Bāṭil analysis	Absent (directly to *ḥarām*)	Absent (directly to *ḥarām*)
Taklīfī ruling	*Ḥarām*	*Ḥarām*

From this comparison, several observations emerge. First, the pattern is consistent across both fatwas: neither explicitly engages with *wadʿī* components as distinct analytical steps. Second, the gap has not narrowed over time: the cryptocurrency fatwa (2021) exhibits the same procedural gaps as the bank interest fatwa (2004), suggesting no methodological evolution. Third, the absence is systematic: all four *wadʿī* components (*sabab*, *syarat*, *maniʿ*, and *ṣaḥīḥ/bāṭil*) are either absent or only implicitly treated.

Reconstructing the Correct *Istinbāṭ* Sequence

Based on the classical framework of Al-Ghazālī and Al-Syāṭibī, the correct *istinbāṭ* sequence for financial product fatwas should follow the steps outlined in Figure 1.[40]

Figure 1. Correct *Istinbāṭ* Sequence According to *Wadʿī* Theory



[40] Al-Ghazālī, *Al-Mustasfā*, 78; Al-Syāṭibī, *Al-Muwāfaqāt*, 234.

Source: Author's construction based on Al-Ghazālī and Al-Syāṭibī.[41]

Applying this sequence to the case of bank interest, a methodologically sound fatwa would need to demonstrate: (1) *Sabab*: The *sabab* triggering investigation is the presence of a stipulated increase (*ziyādah mushtarāṭah*) in a loan contract; (2) *Syarat*: The conditions for ribā include the increase being stipulated in advance, not tied to risk or profit-sharing, and the underlying transaction being a loan (*qarḍ*) rather than a sale (*bayʿ*); (3) *Maniʿ*: Potential impediments include *ḍarūrah* (necessity); (4) *Ṣaḥīḥ*/*Bāṭil*: If the conditions are met and no impediment applies, the transaction is *bāṭil*; (5) *Taklīfī*: Because the transaction is *bāṭil*, the *taklīfī* ruling is *ḥarām*.

Practical Recommendations for Fatwa Formulation

Based on the analysis above, this study offers the following recommendations. Recommendation 1: Revise the standard fatwa format to include a dedicated section titled "*Wadʿī* Legal Analysis" that explicitly addresses *sabab*, *syarat*, and *maniʿ* before presenting the *taklīfī* ruling. Recommendation 2: Develop product category guidelines that identify which *wadʿī* components are most relevant for emerging financial technologies. Recommendation 3: Include dissenting opinions where significant scholarly disagreement exists. Recommendation 4: Establish a post-fatwa review mechanism to ensure ongoing methodological quality.

CONCLUSION

Based on the systematic analysis of DSN-MUI Fatwa No. 1 of 2004 (bank interest) and Fatwa No. 145 of 2021 (cryptocurrency), this article reaches three main conclusions. First, both fatwas are procedurally premature because they establish a *ḥarām* status (*taklīfī* law) without first explicitly elaborating a *wadʿī* legal analysis, namely *sabab*, *syarat*, *maniʿ*, and *ṣaḥīḥ/bāṭil*. Second, this finding contradicts the established *uṣūl al-fiqh* principles articulated by Al-Ghazālī and Al-Syāṭibī, which require a sequential progression from factual phenomenon to *taklīfī* ruling through *wadʿī* components. Third, the pattern is consistent across time and product categories, suggesting a systematic issue rather than isolated oversight.

[41] Al-Ghazālī, *Al-Mustasfā*, 80; Al-Syāṭibī, *Al-Muwāfaqāt*, 236.

This article offers three original contributions to the field of Islamic economic law. First, it identifies a previously underexamined methodological gap in contemporary fatwa practice. Second, it provides an operationalizable reconstruction of the correct *istinbāṭ* sequence based on classical uṣūl theory. Third, it shifts the discourse on fatwa criticism from substantive debates to procedural rigor, which is more constructive for the long-term development of Islamic legal methodology.

For DSN-MUI specifically, this study recommends revising the standard fatwa format by adding a dedicated section entitled "*Wadʿī* Legal Analysis" that explicitly addresses *sabab*, *syarat*, and *maniʿ* prior to stating the *taklīfī* ruling. For other fatwa-issuing bodies, including national councils in Malaysia, Brunei, and the Gulf states, as well as international bodies such as AAOIFI, this study suggests reviewing their internal fatwa protocols to ensure that *wadʿī* analysis is explicitly required rather than merely implicit. For researchers and graduate students, this study opens new avenues for investigating fatwa methodology across different jurisdictions, product categories, and time periods.

This study has several limitations that should be acknowledged. First, the analysis is limited to two DSN-MUI fatwas. Second, this study focuses exclusively on DSN-MUI; comparative research examining fatwa-issuing bodies in other jurisdictions would reveal whether procedural neglect of *wadʿī* analysis is a general phenomenon or specific to Indonesia. Third, this study does not evaluate the substantive correctness of the fatwas' conclusions. Fourth, this study does not empirically investigate why DSN-MUI fatwas bypass *wadʿī* analysis. Future research should address these limitations.

Islamic finance has made remarkable progress over the past two decades, both in Indonesia and globally. However, methodological rigor must keep pace with product innovation. Fatwa-issuing bodies bear a sacred trust (*amānah*) not only to produce correct rulings but also to demonstrate how those rulings were reached through sound methodology. As Al-Syāṭibī reminds us:

إِنَّ الشَّرِيْعَةَ كَمَالُهَا بِكَمَالِ طَرَائِقِ اسْتِنْبَاطِهَا

"Inna al-sharīʿah kamāluhā bi kamāl ṭarāʾiq istinbāṭihā"
(The perfection of *sharīʿah* lies in the perfection of its methods of derivation).[42]

[42] Al-Syāṭibī, *Al-Muwāfaqāt*, 456.

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