

## Reinterpreting the *Ratio legis* of the Prohibition of Usury

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**Abstract:** One of the differences of the sharia finance and the conventional counterpart is that the former doesn't allow any kinds of interest. Interests applied in the conventional finance are identified as usury. Whatever the size of a debt is, if the payment is calculated based on the quantity of the debt and the duration of the payment, any payment excess is categorized as usury and it is forbidden. Descriptively, upon examining classic and contemporary sources, the interpretation of usury is not singular. Classical scholars have different opinions on the *ratio legis* ('illah) of the sinfulness of usury and the kinds of forbidden usury. The usury definition developed by the contemporary financial institutions is taken from some of the many scholars' opinions. The argument being chosen tends to be legal-formal, so it also tends to ignore the deepest essence of the usury prohibition, that is to prevent exploiting attitudes (*dhulm*). This legal-formal approach opens possibilities for sharia financial products to have exploitative characteristics. Taking these facts as background, this essay proposes a reinterpretation of usury, not only seen as a loan interest, but as a process of the embodiment of sharia financial institution that is just and humanistic.

**Key words:** *Ratio-legis* ('illah) · Usury · Interest · Profit and loss sharing

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### INTRODUCTION

The development of sharia financial institutions, especially sharia banks, in Indonesia, in quantity shows increase on annual basis. However, in quality this development is only restricted to consumption financing which does not contribute to eradicate the fundamental problems such as poverty and backwardness. Moreover, from the sharia legal perspective, there is a systematic effort to implement sharia but only formally and not taking into account the purest essence of the sharia, that is the ultimate goal of the sharia itself. The formalization of the Islamic economic law tends only to hide conventional finances behind sharia mask and hence in many instances permissive reasonings are produced, ignoring the very principles of sharia, only to serve the capital owners whose vested interest is to keep their profits at the maximum level. Therefore it is a necessity to re-actualize the Islamic economic law to bring back the spirit of sharia into the Islamic economy.

Re-actualization is in essence an effort to place Islamic law in different ages and this effort is embodied in the ceaseless *ijtihad* (legal endeavor) to formulate laws that bring benefits for as many people as possible.

*Ijtihad* is a responsibility for all of able people including the MUI (the Indonesian Ulama Council) and sharia councils all over the world whose one of responsibilities is to provide guidance for the all of the people in dealing with various problems including such social issues as those related to the finance enterprises. The establishment of sharia financial institutions is much related to Muslims' common belief that bank interest is identical to the sinful usury. This belief is then strengthened by the the MUI decree No. 1/2004 [1] stipulating that bank interest is forbidden and identical to usury. To avoid such a risk, it is necessary to establish banks that are not based its operation on interest, but on profit-sharing. This *ijtihad* consequently forbids all of bank operations that give benefit without any reward. However, in reality the *ijtihad* ultimate goal, i.e. to give

birth to true Islamic banks is far from complete. Instead of establishment of Islamic banks with original products, what is really happening is to put existing conventional products in sharia wrapping. This substitution is formulated on the base of *ba'i* (trade) and *ijarah* (fee-based income). In an effort of re-actualization, it needs to have further endeavor to develop stable epistemological and axiological bases for the true Islamic economy and the supporting institutions.

Islamic banking theories having developed since the '50s and put into practice since early 1990, strengthen the notions that an Islamic bank should be free from interest, instead it is supposed to be based on *mudarabah* and *musharakah* or profit-and-loss sharing. Islamic banking theoreticians and jurists, who contribute to this field, define usury as interest and any pre-defined benefits over capital, especially money capital. They are assured that reinterpretation of the traditional definition of usury as a mission impossible as Islamic law is unchangeable and eternal [2]. To put this theory into practice all Islamic banks should refuse all forms of transaction and contract having legally apparent interest. However, those transactions with non-explicit interest, also known as non-interest, such as currency option, short-term commercial operation under the name of *mudarabah*, *musharakah*, *murabahah* and *ijarah* are fully accepted behind the mask of fee, commission and earnings [2].

Abdullah Saeed sees that this is where the problem begins. The accepted traditional interpretation of usury faces unsolved challenges and is inapplicable in the contemporary finances and economy. Moreover, these practices are morally unacceptable. The Islamic banks are not superior to their conventional counterparts whom they refuse because of interest issues [3]. To bridge the gap there are attempts to do *hiyal shar'iyah fi muamalah* [4], (*shariah* reasonings in the social field), including those laws related to the usury. This effort is inevitable because of the conceptual and practical challenges in the interpretation of usury. All forms of correction to the Islamic bank operation might perhaps be impossible if there is no effort to form new perspective on the concept of usury [2]. Is the meaning of usury according to the Qur'an and Sunnah singular as what has been accepted by the mainstream supporters of Islamic bank, or is there any other alternative? To analyze the alternative meaning of usury is the goal of this essay. This is necessary because of the current development. *Fatwa* (legal decree) formulation which is taken as the fundament in judging the sharia financial products is based on the sharia council's *fatwa*. In Indonesia it is the National Sharia Board of the Ulama Council of Indonesia.

### Understanding the Ratio Legis ('Allah) of Usury

**Prohibition:** Usury is a term that is difficult to explain as it is ambiguous in nature [5]. This is acknowledged by Ibn Arabi [6], Ibn Katsir [7], Khudari Bek [8] and Muhammad Zaki abd al-Bar [9]. Many classical and contemporary scholars have discussed the meanings of usury and reasoning of the prohibition of usury. The results vary. Henceforth, what is needed to do is to scrutinize the most compatible arguments for contemporary problems. The scrutiny is called by Yusuf Qaradhawi as *ijtihad intiqa'i*.

Etymologically, usury is an addition (الزيادة) as Allah says in surah al-Hajj: 5, Q.S. Fushilat: 39; Q.S. al-Nahl: 92. Literally, according to Hambali school, usury is

الزيادة في اشياء مخصوصة

While according to Hanafi school usury is defined as:

فضل مال بلا عوض في معاوضة مال بمال [10]

Usury is a forbidden deed according to the Qur'an (Q.S. 2: 275-278), *Sunnah* (as narrated by Bukhari from Usamah bin Zaid) and *ijma* (ulamas' concensus). Mainly, there are two kinds of usury: *riba al-dain* (usury in loans) and *riba al-ba'i* (usury in trades). *Usury al-dain* is also called *riba al-nasi'ah*, or *riba Al-Qur'an*, or *riba jail* [11]. This kind of usury was a common practice among the Arabs before Islam and therefore it is called as the usury of ignorance. The practice is to extend the loan period by adding payment to the loan. The more time the creditor needs to pay back the more additions h/she should put into the payment. This kind of usury is applied not only to money loans but also to the postponed payment in trades.

Zaydan Abu al-Makarim defines this usury as an addition to a loan in relation to the addition of payment time (الزيادة على الدين مقابل الأجل). The usury is applied when (1) there is loan in the form of debt (القرض) or postponed payment of a trade (بيع بثمن مؤجل); (2) there is addition to the principal debt; (3) this addition is preconditioned; (4) the addition is increased along the additional payment time [5].

The second type of usury, *riba al-ba'i* is also called *riba al-sunnah* [5], because the prohibition is based on the *sunnah* of the Prophet's PBUH. Ibn Qayyim calls this usury as *riba khafi*, because its prohibition is aimed to avoid people from slipping into (*sadd al-dhariah*) the real usury [11]. The second practice of usury is *riba al-fadl*, that is an object addition pre-required in a trade on the basis of sharia measure, scale and weight on the same

object or *riba al-nasa'i* that is in addition to the length of payment time, additional object to a debt of a different scales or weights of different of the same object. This second type of usury is productively argued by scholars because of its ambivalent meaning. The Prophet mentions a usurious object without describing the essence or legal reason. He says,

روى محمد عن أبي حنيفة عن عطية العوفى عن أبي سعيد الخدرى أن رسول الله صلى الله عليه وسلم قال: الذهب بالذهب مثل بمثل يدا بيد والفضل ربا، والفضة بالفضة مثل بمثل يدا بيد والفضل ربا، والخنطة بالخنطة مثل بمثل يدا بيد والفضل ربا، والملح بالملح مثل بمثل يدا بيد والفضل ربا، والشعير بالشعير مثل بمثل يدا بيد والفضل ربا والتمر بالتمر مثل بمثل يدا بيد والفضل ربا. فإذا اختلفت الأصناف فبيعوا كيف شئتم إذا كان يدا بيد [5]

According to this hadith, there are six commodities under the category of usury: gold, silver, wheat crops, salt, wheat and dates. If there is an exchange among those six commodities the quality and the quantity should be the same and should be paid immediately. Any excess to the exchange is categorized as usury. To avoid the usury the Prophet suggests that, "If the commodities [to be exchanged] are different, sell it for a desired price with immediate payment."

There are various interpretations on this hadith among jurists regarding the commodity limitation: is it only applied to those six commodities or can it be extended to other commodities? If it is extendable, what is the reasoning of the extension? The group that opposes the extension has different arguments. The Zahirite (literal) school refuses the extension because they refuse analogical (*qiyas*) method as the sharia guide [12]. On the other hand both 'Uthman al-Bata and Ibn Uqail accept analogy as sharia guide but they fail to find the reasoning to do an analogy in the question of usury [5]. For them, the reasoning of usury is categorized as *ghayr ma'qul al-ma'na*.

The majority of jurists (*jumhur fuqaha*), including the four prominent scholars, accept the extension to the six usurious commodities with analogical method. However, they discord on the legal reasoning of usury prohibition. The limit of six commodities in the hadith is about the most common usury transactions in the days of the Prophet. According to Hanafi and Hambali Schools, the ratio legis of the six commodities is that it is weighable (موزونة) and the exchanged goods are of the same type. The reasoning of the *riba fadl* is that it consists of two things: size (القدر) and type (الجنسية). On the other hand the reasoning of *riba nasa'i*, is that it is scalable, measurable and of the same type. The two Schools are different only on the reasoning components of the *riba*

*fadl*. In Hambali School, the type similarity of the goods is the requirement of the reasoning and not the component of it.

Maliki School divides the reasoning into six usurious commodities according to the type. For gold and silver, the reasoning is that it is valuable (الثمينة) while for wheat grains, wheat, dates and salt it is the multiple characteristics (العلة المركبة) i.e. they are principal goods (القوتية) and storable (الإبخار). In the analogical method, if there is one reasoning missing, the analogy cannot be sanctioned. Those two reasonings should also be accompanied by the type similarity.

The legal reasoning of the six usurious commodities from the Syafii School is almost the same as of the Maliki. Parallel to the Maliki's view, the Syafiite School divides the usurious commodities into two groups. First is gold and silver. The reasoning of this group is that it is valuable (الثمينة). Second is group of wheat grains, wheat, dates and salt. The reasoning of this group is eatable (المطعمات) either as principal goods or not, either storable or not. Of the *riba fadl*, the type similarity is required. This similarity is not required for the *riba nasa'i*.

Therefore, according to Hanafi and Hambali Schools, the core of usury is limited to measurable and weighable goods, either eatable or not, as principal goods or not, such as pebbles, iron and tin. The extension does not include countable goods and crops. These goods are not categorized as usurious. On the other hand, Maliki School makes the valuable and principal goods as the core of extension, whether or not they are measurable, weighable, or countable. The Syafiite sets the extension as valuable and eatable, whether or not they are measurable, weighable, principal goods, or storable. Iron and tin are not categorized as usurious commodities according to the Syafiite. However, numerous farm animals, watermelon, peas, grains, rice, meat, fish, cheese, vegetables, fruits and sugar are included into the usurious category. Below are usurious commodities from the four Schools:

Table I: Hanafi and Hambali

No.	Usurious measures	(I) Same type but different content	(II) Same type but different content	(III) Diff. type and same content	(IV) Same in measure and weight
1	Same + imm. Payment	Allowed	Allowed	Allowed	Allowed
2	Same+installment	Forbidden	Forbidden	Forbidden	Allowed
3	Different+imm. Payment	Allowed	Allowed	Allowed	
4	Different+installment	Forbidden	Forbidden	Forbidden	

Table II: Syafite

No.	Usurious measures	(I) Valuable of the same type	(II) Valuable of diff. type	(III) Consumable of the same type	(IV) Consumable of diff. type
1	Same + imm. Payment	Allowed	Allowed	Allowed	Allowed
2	Same + installment	Forbidden	Forbidden	Forbidden	Forbidden
3	Different + imm. Payment	Forbidden	Allowed	Forbidden	Allowed
4	Different + installment	Forbidden	Forbidden	Forbidden	Forbidden

Table III: Maliki

No.	Usurious measures	(I) Valuable of the same type	(II) Valuable of diff. type	(III) Principal goods, storable, of the same type	(IV) Principal goods, storable, of diff. type
1	Same + imm. Payment	Allowed	Allowed	Allowed	Allowed
2	Same + installment	Forbidden	Forbidden	Forbidden	Forbidden
3	Different + imm. Payment	Forbidden	Allowed	Forbidden	Allowed
4	Different + installment	Forbidden	Forbidden	Forbidden	Forbidden

Meanwhile, the Zahirite School, as they do not accept analogical method as legal guide, limits the usury to six commodities as narrated in the hadith. As Ibn Hazm emphasizes, usury is forbidden only to six goods, that is dates, wheat grains, wheat, salt, gold and silver [13].

Imamide and Zaidite Shiite have the same reasoning as Hanafi and Hambali Schools that is measurability and weighability and similarity in type and content [5].

Debates over the essence and reasoning of usury did not only take place after the 2nd century Hijri. Among the Prophets' companions, there were already disputes on this matter. Ibn Abbas, Usamah ibn Zaid ibn Arqam, Zubair, Ibn Zubair argues that usury is only forbidden for the *nasiyah*. This is based on the hadith:

[14] لاربا الافى النسينة (رواه البخارى)

This opinion is accorded by Ibn Mas'ud, Abdullah ibn Umar and Meccan jurists like Abu al-Sha'tha, 'Ata, Tawus, Sa'id ibn Jubayr and 'Ikrimah. These scholars were then named as Ibn Abbas group.

This School believes that the ruling of usury in the earlier hadiths is already amended. The reason is that the hadith ruling that the usury prohibition is applied to the *riba nasi'ah* came the latest among other hadiths on the same issue. Therefore, this School allows a trade of one *sa'* with two *sa'*s or one dinar with two dinars if the qualities of the traded commodities are worth of distinction. Superior rice is definitely different regular

type. It is not beneficial to equally value two different things because each has its own benefits when treated distinctly. In fact, what is necessary is to measure the content of an object with fair measure, consented and desired by the two parties involved and no measure deduction, no unjust treatment and no uncertainty and fraud and most importantly the payment duration is not part of value addition [5].

Regarding the reference hadith used by the Ibn Abbas School, Wahbah Zuhaili argues that the backdrop of the hadith was a question about a trade of wheat grains with grain and gold with silver on deferred payment. Answering this, the Prophet says (لاربا الافى النسينة). The critics of this School [14, 15]. argue that the narrator did not hear the question preceding the answer or did not cite it on purpose. Wahbah Zuhaili views that the hadith is about *riba nasi'ah* as being the most perfect example of usury having the worst impacts, beside that this type is the most common practice along with the *riba fadl* [10].

Zaidan Abu al-Makarim is a scholar who wrote a book about Ibn Abbas' version of usury. First al-Makarim argues that all of the previous hadiths have been amended by the ruling which says that usury is only applied to the deferred payment, but not to *riba fadl*, because this ruling comes as the latest hadith related to usury [5]. Second, the aim of the prohibition of the trade of usurious goods is to prevent unfairness in measuring and weighing. If the measure of a traded goods is unknown then the value is set on one measurement

(معيار واحد) or goods with a fixed value, that is measured with the currency at the trading time [16]. Third, the reasoning of usury is addition without any performance if not accompanied by common measurement (إذا لم يكن معيار التقدير واحد). Goods of the same type but in different form cannot be treated as the same. Goods with high quality must be differed from that of low quality. The most important thing is how to set a precise measurement to value traded goods. And behind this, the most essential thing is to uphold justice, to prevent fraud and unfairness, whatever goods to be exchanged. To limit usury to the six commodities will only narrow the meaning of usury. Meanwhile, the unjust social practices are thought to be legal [5]. Within this framework, the Prophet's sayings on numerous different usurious practices are easy to understand. They are, among others:

عن عبد الله بن مسعود رضي الله عنه عن النبي صلى الله عليه وسلم قال: الربا ثلاثة وسبعون بابا أيسرها مثل أن ينكح الرجل أمه وإن أربى الربا عرضُ الرجل المسلم (رواه ابن ماجه مختصرا والحاكم بتمامه وصححه) [16]  
عن أبي هريرة رضي الله عنه أن النبي صلى الله عليه وسلم قال: لياتين على الناس زمان لا يبقى أحد أكل الربا فإن لم يأكله أصاباه من بخارة وفي رواية من غباره (رواه أبو داود وأخرجه النسائي وابن ماجه) [5]  
عن رسول الله صلى الله عليه وسلم يأتي على الناس زمان يستخفون الربا بالبيع (رواه أبو داود) [5]

whatever the agreement is, loan-and-borrow (*qard*), sale (either *ba'i musawamah murabahah*, *tawliyah*, or *wadi'ah*) and joint-venture (either *mudarabah* or *musharakah*) are forbidden if there is a preconditioned increment. Zaidan calls it [5] (تحريم الزيادة في مقابل الأجل).

Another meaning of usury comes from the scholars who use contextual interpretation. The conceptual framework of this interpretation is first to comprehend the Qur'an in the literal mode and historical context and then to project them to contemporary situation. Second is to take all of the social phenomena under the umbrella of the Quranic goals [17]. Taking those conceptual frameworks into consideration, the usury prohibition in the Qur'an is more moralistic than legalistic. This is because it is understood that the usury prohibition is a response of the Qur'an to the Arabic people's perception on wealth.

The Arab peninsula in the 6th century was a busy region in trading. Mecca is one of the wealthiest trade centers. Meanwhile, Medina is a rich oasis, other than a trade city, too. In many places in the Qur'an, there are pictures of the active trades among the Arabs. Surah al-Quraish, for instance, depicts the trade between the Quraish tribe with the Syrians in the summer and with Yemen in the winter. In fact, because the Arabs were so intimate with trade, a lot of Quranic doctrines are expressed in terms of trade, such as "people's deeds are recorded in a book" [18], "the afterlife court is an account" [19] "every person will receive a record of deeds of their life time" [20], "the scale is set up like the money or goods trade" [21], "someone's deeds are going to be scaled and h/she will receive compensation or commission" [22], "to spend wealth on the Lord's path is like giving loan to Him" [23] and "trade which saves you from the afterlife punishment" [24].

The trade activities of the Arabs were aimed only to accumulate wealth because they believed that wealth attracts immortality (*khulud*). Consequently, it paved the way to unethical and exploitative economy. Some verses in al-Qur'an mentions some cheatings in weighing and measuring. In other words, the usury practices were prevalent [25].

The Qur'an depicts the usury practices as exploitation in the form of multiplied loan. These practices create a gap between the rich and the poor, or even undermine the social cohesion. Wealth is only to be accumulated and does not have any real social function. In this context, the Qur'an prohibits usury [17].

Chronologically, the first verse being revealed was surah al-Rum:39. This verse is in relation to the context of *zakat* (surah al-Rum: 37-39). In the verse 37 it is emphasized that the Lord has the authority to enlarge or to restrict men's provision. It means that wealth that people possess is Allah's blessing and not personal possession and not to be used for self interests. Therefore, in the next verse it is said that Allah's blessing should have real social function. The usury character as revealed in the verse of 39 is multiplicity, as concluded at the end of the verse with the word *mud'ifun* (recompensed in manifold), a term that is attributed to those who give *zakat* [17].

The second verse on *zakat* is surah Ali Imran:130. The context of the usury prohibition is in the surah Ali Imran 129 – 138. In the verse 129 it is said that Allah is

the owner of everything in the sky and on the earth and is omnipotent in forgiving or punishing humans. The believers are forbidden to consume usury which is seen as a non-believing conduct. Willingness to abandon usurious practices is viewed as the manifestation of obedience and wariness (*taqwa*) to Allah and the Prophet.

As the previous series of verse on usury, these verses also emphasize on the multiplication of usury. In this part, usury practices are put in contradiction with charity and good deed. Charity and good deed are synonymous to *zakat*.

The last part regarding usury is a series of verses in the surah al-Baqarah 261-281. The emphasis on usury is in the verses of 275-278. In the beginning of the series, Allah Allah says that people who spend their wealth in Allah's way will have their possession multiplied. However, this should be rooted in sincerity, self-restriction and humility and not to show off which can deny the reward of the good deed. And then, it depicts the multiplicity of *zakat* given in the name of Allah only, either done openly or secretly to the people who reserve the right to receive it.

After pinpointing the significances of *zakat*, Allah threatens the people practicing usury as they treat it as a common business, as if they were in trance. Allah will forgive the people for all their previous usurious practices but will punish those who keep practicing it after the prohibition has been revealed. In the verse of 276, usury is again opposed to *zakat* similarly to the aforementioned context. People who give *zakat*, as well as being a believer, do good deeds and do *shalat* will have peacefulness and rewards from Allah. Allah will wage war against those who keep practicing usury and do not pay *zakat*. However, if they repent from practicing usury, they might take the principal debt provided if the debtor is in difficulties; the lender should postpone the payment for a while. However, Allah prefers the creditor who gives charity to the debtor.

The prohibition is not only applied to the Prophet Muhammad's people, but the Quran says that it is also applied previous peoples, especially the Jews. One part of the Quran, revealed in the Madina period, depicts of how a group of Jewish people were punished because of practicing usury as kind of taking other's wealth in a sinful way while it is already forbidden. This, again, is in the context of giving *zakat* as well as other good deeds [26].

Therefore, the probe on the chronology and context of usury shows that the usury verses in the Quran are always in the context *zakat*, charity, alms and other related deeds. Usury and *zakat* are always in opposition. The basic usury character in numerous contexts is multiplicity [27]. If usury produces worldly manifoldness, on the other end, *zakat* is a loan to Allah which He will return in multiplicity. The characteristic of usury in the Quran is multiplicity. Usury is prohibited because it strips off the social function of wealth. Usury creates wealth as a means to exploit unfortunate people (debtor) by the fortunate (creditor). This exploitation entrenches the poor into the vicious circle of poverty. As the result, the social cohesion needed to develop cooperation is undermined. On the other hand, *zakat*, as being contradicted to usury, functions as the real glue of the social cohesion [17].

This argument is in accordance with Quraish Shihab's view. He opines that the usury characteristic of multiplicity is not a precondition or to limit the absolution of the usury in other verses. The word "multiplicity" (*ad'afan mudaafan*) is only an illustration of the usury as being commonly practiced by the Arab people at that time. Analyzing the *surah* of al-Baqarah: 279 which is the final part of the series of usury prohibition—that is *فلکم رؤس أموالکم*—Quraish Shihab concludes that a creditor may only take the principal loan. Any addition identical to usury, either in multiplicity or not, is forbidden. The addition is identical if it is accompanied by unjustness as said in the last verse of the series in al-Baqarah: 279 (لا تظلمون ولا تظلمون), "Deal not unjustly and ye (the creditor) shall not be dealt with unjustly (by the debtor) [28]. Any addition to the return is legal as long as there is no exploitation and injustice (*dzulm*) [29].

The rule not to deal unjustly in the context of usury applies reciprocally, to the debtor as well to the creditor. According to Yunus al-Misry, any addition prerequired by the creditor to the principal loan is unjust. Substantially, loan is a virtue. Requiring addition to those in need is truly an injustice. This does not mean that a loan transaction by the have (yang mampu), for example as a part of business, is allowed. Any addition in any loan is not allowed. This is because the debtor might suffer loss in doing business. Therefore, the best option for this situation is the profit-loss sharing (*mudarabah*) [30].

On the contrary, the debtor too cannot be unjust to the creditor such as reducing the principal loan [31, 32] and postpone payment while s/he is actually able to pay [33]. However, interestingly, Rafiq Yunus has his own

interpretation on this. The verse means that it is Allah who will treat unjustly in terms of rewards. Rafiq has four reasons behind his theory. **First**, loan (*qard*) is a transaction of an exchange of two identical objects. The shariah rules that an exchange should be done immediately. However, in reality *qard* is a loan whose return is given at a certain time in the future. This is categorized as postponement usury (*riba nasa'i*) (with additional time) which is forbidden in sales but allowed in loans as a gesture from the creditor to the debtor. In economics, there is an axiom that an object's value today is higher than that in the future. Therefore, loan is a reduced exchange (*muawadah naqisah*). This value reduction cannot be compensated with usury in the world but will generously be rewarded by Allah [34]. **Second**, not to treat unjustly is interpreted as to return the principal loan without any addition. While 'do not be treated unjustly' means better if added with 'reward from Allah'. **Third**, if 'not treated unjustly' means not to reduce the principal loan, it means that any adjustment to future's value in a loan is allowed. **Fourth**, if 'not treated unjustly' means not to reduce the principal loan, then the creditor might take back the lost benefits during the loan and the loaner must give it. And, the above consequences deviate from the true goal of barter that is to help people in need. **Fifth**, the meaning of Allah's reward is strengthened by the following verse, that is al-Baqarah 281. (And fear the Day when ye shall be brought back to Allah. Then shall every soul be paid what it earned and none shall be dealt with unjustly [31].

**The Consequences of Usury Meanings and Their Application in the Financial Institutions:** After analyzing Rasyid Ridha's view on usury, Quraish Shihab concludes that interest is not identical to usury, because the legal reasoning of the usury prohibition is not because of the excess added to the principal loan. However, there are other characteristics to be attached to usury, that is unfairness and injustice (*zulm*) [29]. So, it might be said that the reasoning of usury is any addition imposed unjustly (الزيادة مع الظلم). If a financial institution does not unfairly set an interest to its clients, then the interest is allowed. Interest is forbidden if the institution treats their clients unjustly so that they become powerless and get even poorer.

We come to the same conclusion if the usury verses are interpreted with the contextual method. Based on the in-depth study on the usury verses, it can be concluded that the reasoning of usury is not because of the addition to the principal loan. To allow non-manifold return of

usury is also unacceptable because usury is practiced with manifoldness since the beginning. And neither is the idea that usury as an addition to the principal loan comes from the periods after the Qur'an. In fact, the prohibition of usury is based on the exploitation of wealth and hence it is not used for the benefits of the whole society. On the contrary, in *zakat*, as the opposition of usury, wealth is used the best way possible for the welfare of the people [17]. Based on this argument, an interest set by financial institutions cannot be categorized as forbidden if it does not entail any exploitation. Every form of economy and finance system involving exploitation and preventing wealth from having real social welfare is categorized as the forbidden usury.

Zaidan Abu al-Makarim's argument, which is similar to Ibnu Abbas School's view on usury, should be examined carefully. The limitation of usury to the six commodities is the Prophet's immediate response to the dominant practices of usury at a certain time. Rule on *qard* is difficult to set up as the measurement is relatively difficult too, whether in volume or in weight and that is the main reason for the Prophet to forbid usury of goods-exchange (*usury fadl*). To resolve this, the Prophet commanded to exchange the usurious goods with currency of the closest value possible. After the measurement has been established in the business and law practices, the question is left on the usury based on delayed payment of a loan (*usury nasi'ah*). This usury is not only on the debt based on *qard* transaction, but also on any other social interaction such as sales, leases, joint ventures and others [5]. The goal of the usury prohibition is to achieve justice either in the production, distribution, consumption or saving of all of the society [5]. Zaidan argues that capitalist countries' exploitation to the developing countries is a form of usury. He labels it as the global usury (الربا العالمي) [5]. As an example of this is the sale price of cocoa produced in Ghana, cotton in Egypt, oil in Middle East, clove in Indonesia set by a few capitalist countries while the hardworking farmers producing the commodities get minimum prices because the traders or the capitalist get the much bigger portion of the profits.

Hence, usury is not only in the forms of interest from the financial institutions but also in many business practices which do not uphold justice. In other words, usury is forbidden so as to avoid exploitation on the production stages by the wealthy. Whatever the transaction is, if a trade contains any kind of exploitation it should be forbidden, being categorized as usury.

Many other scholars also expand the meaning of usury. Hifni Nasif, in 1908 before the Islamic banks flourish just as today, said that if any Islamic bank produces finance based on *hilah shar'iyah* so that a loan does not generate any benefit, then it disregards (*tasahul*) the ruling on usury. This is also supported by Rafiq Yunus al-Misri saying that a loan (*qard*), which forbids any addition, but then wrapped in a sale, is still usurious [31]. Legal reasoning (*hilah shar'iyah*) in the banking products having usurious characteristics would change the prohibition stance of the law. Therefore, *ba'i al-'inah*, *tawaruq* [11], *muhallil usury*, *ba'i wa salaf*, *ba'i al-mu'amalah*, *ba'i al-wafa*, *ba'i istiglal* and any similar practices are categorized as usury.

The product development in Islamic financial institutions based on mark-up in a sale and fee in a lease (*ijarah*) was not anticipated by the previous theoreticians in developing Islamic financial institutions, especially banks. The book by Muhammad Nejjatullah Shiddiqi, *Banking without Interest* [35] and another one by Mohammad Uzair, *Interest Free Banking* [36] do not mention *murabahah* whatsoever. Both project that the Islamic banks will operate on the basis of profit-loss sharing based on *musarakah* (joint venture) and *mudarabah* (partnership).

**Shariah Financial Institutions in Indonesia:** In Indonesia, following a long debate, the Indonesian Ulama Council (MUI) issued a legal decree (*fatwa*) regarding usury. In the opinion of MUI No. 1 2004 on interest, usury is defined as addition without any compensation due to the postponement of payment as agreed in advance (الزيادة يلا عوض زيادة الأجل باشر اطمقدم) [1]. This *fatwa*

seems to emphasize only on one type of usury, that is the usury of *nasiah*. This kind of usury is identical with interest (*faidah*) that is an addition attached to a money loan transaction (*qard*) as calculated from the principal loan without any consideration of the benefit or the yield of the principal loan, based on a fixed period and calculated in advance. Hence, the MUI opines that the interests set by the financial institutions are forbidden. The prohibition of the interest is without limit. It is only applicable where the shariah financial institutions have been established. In the regions where there is no operating shariah financial institution, the conventional finance transactions are allowed on the basis of emergency/urgency (*darurat/hajat*) [1].

The MUI's decree is the followed by other technical decrees issued by a body under this council named the Board of National Shariah of the Indonesian Ulama Council (DSN-MUI). DSN-MUI is responsible to develop the application of shariah values in the finance and in economy in general, to issue decrees on various financial practices, to issue decrees on shariah financial products and services and to overview the decree implementation [37]. Up to mid 2011 DSN-MUI have issued 80 decrees related to shariah financial institution. The decrees are the foundation of the operation of shariah bank, bond and insurance. To acknowledge the existence of syariah banking and bond, the state issued the Law No. 21 of 2008 on Shariah Banking and Law No. 18 of 2008 on State Shariah Securities.

To gain more detail picture on the national shariah banking, below is the general condition of the shariah banking in Indonesia:

Table IV: Condition of the National Shariah Bank Up to March 2011

Asset	Financing	Third party funds
83.198 trillions	67.982 trillions	67.982 trillions

Processed from Bank of Indonesia's Statistics on Shariah Banks, March 2011. www.bi.go.id

Table V: The Shariah Bank Network Offices

Shariah General Banks	Shariah Business Units	Shariah Bank Treasury Offices	Shariah People's Credit Banks
11	23	376	152

Processed from Bank of Indonesia's Statistics on Shariah Banks, March 2011 www.bi.go.id

Table VI: Type of Financing

No	Type of Transaction	Amount in milliard	Percentage
1	<i>Mudarabah</i>	8.767	11.80
2	<i>Musharakah</i>	14.988	20.18
3	<i>Murabahah</i>	40.877	55.05
4	<i>Salam</i>	0	0
5	<i>Istishna</i>	328	0.44
6	<i>Ijarah</i>	2.572	3.46
7	<i>Qard</i>	6.721	9.05
8	Others	0	0

Processed from Bank of Indonesia's Statistics on Shariah Banks, March 2011 www.bi.go.id



Table VII: Percentage of *Murabahah* Financing

No	Year	<i>Murabahah</i> Percentage	<i>Qard</i> Percentage
1	2005	62.28	0.82
2	2006	61.75	1.22
3	2007	59.24	1.93
4	2008	58.87	2.51
5	2009	56.14	3.90
6	2010	55.01	6.94
7	March 2011	55.05	6.05

Processed from Bank of Indonesia's Statistics on Shariah Banks, March 2011 www.bi.go.id

Table VIII: Financing Based on Economic Sector

No	Economic Sector	Amount in milliard
1	Agriculture, forestry and agricultural facilities	1.981
2	Mining	1.051
3	Manufacture	2.549
4	Electricity, gas and water	1.857
5	Construction	4.680
6	Trade, restaurant and hotel	7.689
7	Transportation, storage and communication	3.768
8	Business service	20.210
9	Social service	3.407
10	Others	27.098

Processed from Bank of Indonesia's Statistics on Shariah Banks, March 2011 www.bi.go.id

Based on the tables above, *murabahah* and non-*mudarahah* or *musarakah*, transactions are still dominant in the national shariah bank financing, although the trend is declining. However, at the same time *qard* transactions are ascending. This means consumptive finances is growing. This is strengthened by the sectoral table. "Others" complies major percentage compared with other sectors (36.49%).

Formally, all of the Indonesian shariah financial products are usury-free as being legalized by the DSN-MUI. However, the legal-formal character of DSN-MUI makes this institution seem to be a "shariah stamping agent" of the products created by the bankers. The transactions in the conventional finance system are changed into shariah system, free from usury. Meanwhile, the very essence of usury of a transaction is not changed. The transaction formal transformation opens way to unjust exploitations.

The root of the problem is that the MUI's decrees view usury only as addition to loan transactions (*qard*). Hence id the *qard* transactions are replaced by non-cash sales or loan based on *ijarah* with certain *fee* are viewed as allowed, whatever risks the debtors should face. A family whose member is sick could apply for a multi-purpose credit to a shariah bank [i]. In this transaction, *ijarah* or *kafalah* plus *ijarah* is applied. In a multi-purpose finance, there is an addition to the principal loan. Based on the MUI decree, this is not categorized as

usury because the transaction is not purely *qard* but *ijarah*. Other than the difference on transaction, there is no specific relation between multi-purpose credit with the Prophet's prohibition against *ba'i wa salaf* which is later analogized as *ijarah wa salaf*, let alone the difference in social matters.

If we only ground on the legal-formal prohibition of usury, it is difficult to define the *culturstelsel* [ii] is a usury. The Dutch-Indies government ruled that the farmers should plant export agricultural commodities on 1/5 to 2/5 of their land. The *culturstelsel* applied joint-venture and sales. However, the Dutch capital owners (*sahib mal*) and buyer became wealthier while the farmers (*muzari*) and sellers became poorer. The farmers received very minimum price while the traders received maximum outturn. This was because there was no equality, but participation without emancipation, an exploitative participation. There was no equality between the capital owner and the workers. Instead, what really happened was a relation between master and coolies.

This kind of relation continues until today even Indonesia has already gained her independence. In the People's Plantation program there was a joint venture between the plant owner and the farmers where the latter were to provide the raw material for the plants. However, the inequality soon took place when the plant owners regulated the prices and quality. The weak farmers were then dependent to the powerful plant owners. The farmers

gained the primary surplus value while the plant owners had the privilege on the third-and-on surplus value. Even worse, bank credits were only granted to the plant owners but not to the farmers [39]. This was a new kind of *culturstelsel*. This was the essence of usury: exploitation.

Usury is not applied to limited transactions/practices, such as loan with addition or a kind. However, it lies in the moralistic value of the business conduct, i.e. injustice and exploitation. As long as those two things linger, a transaction is categorized as usury.

### CONCLUSION

Keen observation on the sharia councils' methods in defining what is to be Islamic and what is not in terms of Islamic banking and financial practices shows that they incessantly refers to the jurisprudence literature to justify or to refuse modern financial transactions. These methods need criticism and re-actualization because the objects of the endeavour are new and unprecedented. Re-actualization by forming new *ijtihad*/endeavour methods taking into account related texts and contexts is something valid. Moreover, changing a existing legal opinion is something normal in law.

After doing careful observation on the interpretations of *usury* related to the Islamic banking system, it is necessary to do in-depth study on the meaning of *usury*. Some measures can be taken. First is to do a critical analysis on the *usury* interpretation which still has some weaknesses. This is shown by a number of reasoning (*illah*) to cover the holes. Re-actualization of the meaning of usury by new approach and method of *ijtihad* is a necessity. Second, the new approach and method are still based on the major references of the Quran and the Sunnah. Those two sources are flexible to allow the development of various institutions required by the Muslim society on the basis of sincerity, justice, equality and without exploitation and unjust treatment. This argument also shows that there are many sources arguing that reevaluation on usury is not only possible but also should be made as a norm, regarding how the Prophet's prominent companions and early authorities viewed the importance of *ijtihad* and how they put reasons for every commands and prohibitions. The key term is "meaning enhancement" of usury by taking account the social context.

From this point of view, in the financial and banking transactions, it is the injustice which defines usury. Any literal 'addition' of a loan payment to a creditor does

not make it usury. Therefore, every transaction on an interest entailing injustice should be categorized as usury and should be forbidden. Accordingly, any transaction, although not explicitly require any interest, if it treats one of the parties unfairly, can be viewed as usury. The core idea of the re-actualization is that a situation of a certain transaction, parties involved in the transactions, relative power of a party against the other, as well as the economic and social condition surrounding the transaction in question, determine whether or not the transaction is usury.

The Islamic banks clearly do not erase 'interest' from their transactions, but hide it in many pseudonyms and terms. There is no convincing argument that the Islamic economists have developed financing methods that are proven free from interest and at the same time can become the foundation of modern banking system. Therefore, perhaps this is the right time to realistically look again upon usury. In banking, it is not sufficient to label Islamic and shariah to a certain bank and the bank is wholly Islamic. Banks, whether Islamic or not, should operate more humanely, be able to give people access to resources with humane requirements and with decent cost. This kind of banking that is needed to increase the living standard of the Muslim world which is still entrenched in poverty and backwardness.

### REFERENCES

- \* Lecturer at The Faculty of Social and Political Sciences, State Islamic University (Universitas Islam Negeri) Sunan Gunung Djati Bandung, Indonesia.
- \*\* Lecturer at The Faculty of Sharia and Law, State Islamic University (Universitas Islam Negeri) Sunan Gunung Djati Bandung, Indonesia.
- 1. Ma'ruf, A., *et al.*, 2010. Himpunan Fatwa Majelis Ulama Indonesia, Jakarta: MUI Sekretariat.
- 2. Abdullah, S., 2004. Menyoal Bank Syariah Kritik atas Interpretasi Bunga Bank Kaum Neo-revivalis, (trans.) Arif Maftuhin, Jakarta: Paramadina.
- 3. Zaim, S. and I. N. Hosein, 2003. Tidak Islamnya Bank Islam : Kritik Atas Perbankan Syariah, Jakarta: Pustaka Adina.
- 4. Muhammad, I., n.d, al-Hiyal al-Fiqhiyah fi al-Muamalat al-Maliyah, al-Dar al-Arabiyah Li Kitab.
- 5. Zaydan, 1972. Madhhab ibn Abbas fi al-Riba Bayna Madhahib Fuqaha al-Sunnah wa Shiah, Cairo: Dar al-Ittihad al-Arabi li Tiba'ah.
- 6. Ibn Araby, n.d., Ahkam al-Qur'an, Vol. I, Cairo: Dar al-Babi al-Halabi.

7. Ibn Katsir, n.d., Umdah al-Tafsir, vol. II, Cairo.
8. Khudari, B., 1988. Usul al-Fiqh, Beirut: Dar al-Fikr.
9. Zaki, M., n.d., al-Riba fi al-Fiqh al-Islami, Cairo.
10. Zuhaili, W., 1989. Al-Fiqh al-Islami wa Adillatuhu, Part IV, Damascus: Dar al-Fikr.
11. Ibnu Qayyim, 1955. 'Ilam al-Muwaqifin 'An Rabb al-Alamin, Vol. II, Cairo: Matba'ah Sa'adah.
12. Khallaf, A.W., 1968. Ilmu Ushul al-Fiqh, Cairo: Maktabah al-Da'wah al-Islamiyah.
13. Ibn Hazm, n.d. al-Muhalla, Vol. IX, Cairo: al-Bab al-Halaby.
14. Al-Bukhari, 1995. Al-Bukhari Bi Hasyiyah al-Sindi, Vol II Beirut: Dar al-Fikr.
15. Sarakhsi, n.d. al-Mabsuth, Vol. XII, Cairo: Matba'ah al-Sa'adah.
16. Al-Asqalani, I.H., n.d. Bulugh al-Maram min Adillah al-Ahkam, Semarang: Karya Toha Putra.
17. Taufik, A.A. and S.R. Panggabean, 1994. Tafsir Kontekstual Al-Qur'an Sebuah Kerangka Konseptual, Bandung: Mizan.
18. Al-Haqqah: 19, 25; al-Inshiqaq: 7-10.
19. Al-Haqqah: 20, al-Inshiqaq: 8.
20. Al-Qari'ah: 6, 8.
21. Al-Anbiya: 47.
22. Al-Inshiqaq: 25.
23. Al-Muzammil: 20; al-Baqarah: 245.
24. al-Saf: 10.
25. Al-Mutafifin: 1-3; al-Isra: 35.
26. Al-Nisa: 161-162.
27. Rida, M.R., 1956. Tafsir al-Manar. Vol. II, Cairo: Dar al-Manar.
28. Shihab, M.Q., 1996. Membumikan Al-Qur'an: Fungsi Wahyu dalam Kehidupan Masyarakat, Bandung: Mizan.
29. Al-San'ani, n.d. Subul al-Salam, Vol. III, Bandung: Maktabah Dahlan.
30. Al-Mishri, R.Y., 2001. Al-Jami fi Usul al-Riba, Damaskus; Dar al-Qolam.
31. Al-Tabari, M.J., 1980. Jami al-Bayan fi Tafsir Al-Qur'an, Beirut: Dar al-Ma'rifah.
32. al-Qurtubi, M., 1985. al-Jami li Ahkam Al-Qur'an, Beirut: Dar al-Ihya al-Turath al-Arabi.
33. Al-Asqalani, I.H., n.d. Fath al-Bari bi Sharh Sahih al-Bukhari, Vol. IV, Riyad: Riasah Idarat al-Buhuth wa al-Ifta.
34. Al-Baqarah 245; al-Nisa: 173.
35. Siddiqi, M.N., 1983. Banking Without Interest, Leicester: Islamic Foundation.
36. Uzair, M., 1978. Interest Free Banking, Karachi: Royal Book Company.
37. Core Guidance for DSN-MUI, in Himpunan Fatwa Dewan Syariah Nasional, 2<sup>nd</sup> edition, Jakarta: DSN-MUI and Bank of Indonesia, 2003.
38. DSN decree No. 44/2004
39. Swasono, S.E., 2010. Kembali ke Pasal 33 UUD 1945 Menolak Neoliberalisme, Jakarta: Yayasan Hatta.