

## THE DIFFERENCE OPINIONS ANALYSIS ON CONVENTIONAL BANK INTEREST LAW ACCORDING TO USHUL FIQH

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### ABSTRACT

*This research discussed conventional bank interest law according to the opinion of the Muslim scholars, which then will continue the discussion with the legal analysis based on the ushul fiqh theory to determine the strength of the conventional bank interest law. The most crucial problem examined in this research is how is prevailing bank interest law viewed from the perspective of usual fiqh? This research is library research. The approach used in this study is a conceptual approach considering the purpose to be achieved in this study is to produce one concept of Islamic legal thinking about bank interest law which is not bounded by existing views or opinions, but actually refers to the rules of Islamic law which is agreed upon by the majority of the muslim scholars. The results of this study are: The scholars have a different opinion on bank interest law. Those who forbid argued that bank interest has in common with usury, so it must be banned. As for those who justify bank interest explained that bank interest is not the same as usury, so its law is halal. As for those who consider it as a shubhat thing, because in their view the bank's interest besides having similarities with usury, also has a number of differences, so its law is shubhat. The bank interest law when viewed from the perspective of ushul fiqh, then both those that forbid, which justify, or those that consider syubhat, all of which do not originate from the qath'i, but zhannî propositions because they come from the results of ijtihad using the qiyâs method. Because of the absence of the qath 'argument, the author argues that the new direction to determine the halal-haram law of banking transactions with the interest system should be assessed from the large or small level of benefit (maslahah) and harm (mudharat) arising from the sale.*

**Keywords:** Bank Interest; Usury; Usul Fiqh; Qiyâs; Maslahah

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## INTRODUCTION

At present, modern society is faced to the problem of interest by conventional banks that applying the interest system on the loans given to their costumers. The banking system is a financial system that only existed in the modern era like today. The people in the early period of Islam were not familiar with the current banking system in the practical sense. Therefore, in response to the phenomenon of bank interest law, among the scholars and Islamic scholars, there were differences of opinion. The different views in assessing these problems lead to different legal conclusions, in terms of whether or not it is permissible, halal haram for Muslims to make a transaction with the banks.

In Islamic teachings, the Koran itself has forbidden the form of *mu'amalah* which contains elements of usury (*riba*). Etymologically, the word exploitation means additional. Because the form of the act of usury is asking for an addition to something that is owed. Therefore usury in the banking context is referred to as interest because one of the acts of *riba* is to make assets, money or anything else that is lent to other people excessively or inflated and increases in size. Raghīb al-Isfahani means the word *riba* as something that rises, increases, grows and develops. Sheikh Abduh Muhammad defines usury as additions required by people who own property to people who borrow their property because the appointment of payments by the borrower is delayed from a predetermined time. The definition of Sheikh Muhammad Abduh according to the author who best fits the context is prohibited usury. Because in the context of the decline of usury verses, an action is called usury because of the request for additional payments from the capital owner to the borrower without the initial agreement. This means that additional payments are demanded on the one hand without the borrower's consent. The concept of usury is known as *riba nasi'ah*, and this is the form of usury which is prohibited by the Qur'an. (Ismail Nawawi, 2012:69).

The basis of the issue of usury can be clearly and assertively known in 3 (three) places, namely in the Koran letter al-Rum verse 39, in the letter Ali Imran verse 130, and also in surat al-Baqarah verses 275-279. All scholars (*fuqaha*) in this world agree that usury is haram. But when faced with the problem of whether bank interest is the same as usury, the scholars clash with each other. For example, there are three opinions among Nahdlatul Ulama scholars, namely: (1) Haram, because it includes loans which are levied (rent); (2) Halal, because there are no conditions during the contract; and (3) Shubhat (because its law cannot be ascertained halal or haram), besides that because legal experts are still at loggerheads (Decision of Mu'tamar NU II in Surabaya, 12 Rabi'ah as-Sani 1346 H October 9, 1927 No. 28).

Among the three opinions above, the most dominant is the first opinion, it is the opinion that prohibits the bank's interest because it is equated with usury that must be shunned. The serious things that happen in society today are closely related to the opinion of the bank's interest. On the one hand, people in modern times can hardly be separated from interacting

with the banking world, but on the other hand, there is a sense of fear and discomfort due to opinions that forbid the bank's interest. Some of them switched to syari'ah-based banks, but in reality, the Islamic banks were not much different from conventional banks in their financial systems, although they differed in terms of implementation. Even in certain cases, conventional banks are considered to be far more humanist than Shari'ah labeled banks. This is the reality that happens a lot at this time where people should get legal solutions that are truly realistic, especially in economic matters that concern the living standards of many people, but because fatwas that are not solutive make the people more miserable.

Based on the reality above, this study would like to reveal the argumentations of Muslim scholars about the bank interest law in Islam. Then the researcher will analyze the bank's interest law by using theories in the science of ushul fiqh and the principals of fiqh. This is intended to find out the position of bank interest law, both those that forbid, justify and those who consider it a concern. Based on the description of the background, then through this research, the author intends to find answers to some of the following problem formulations: (1) What is the meaning of bank interest? (2) What is the mechanism for implementing the interest system in conventional banks? And (3) How is bank interest law viewed from the perspective of ushul fiqh?

## **RESEARCH METHODS**

This research is library research. The approach used in this study is a conceptual approach considering the purpose to be achieved in this study is to produce one concept of Islamic legal thinking about bank interest law which is not bound by existing views or theories, but actually refers to the rules of Islamic law as agreed upon by the leaders of the scholars. The inductive method is used as a data analysis technique by collecting and grouping various forms of the opinion of the scholars which vary into certain models along with the methodological characteristics used about the problems examined in this study, namely about bank interest law.

## **RESULTS AND DISCUSSION**

### ***DEFINITION OF BANK INTEREST***

According to the Republic of Indonesia Law Number 10 of 1998 concerning Banking, what is meant by a bank is *"a business entity that collects funds from the public in the form of deposits and distributes them to the public in the form of loans and / or other forms in order to improve people's lives."*

Whereas according to Republic of Indonesia Law Number 21 of 2008 concerning Shariah Banking, what is meant by banks is *"business entities that collect funds from the public in the form of deposits and distribute them to the public in the form of loans and other forms to improve people's lives."*

Based on the definition of the bank above, it can be said that the bank is a company engaged in finance, meaning that banking activities are always related to the financial sector. The most important banking activity is collecting funds from the wider community, known as the term in the banking sector, is funding activities. The definition of raising funds means collecting or seeking funds by buying funds from the wider community. The purchase of funds from the community is carried out by banks by putting up various strategies so that people want to save their funds in savings. Types of deposits that can be chosen by the community are such as Demand Deposits, Savings, and Time Deposits.

After obtaining funds from the community in the form of deposits (demand deposits, savings, and deposits), the banks are repatriated or resold to the people who need additional capital in the form of loans or better known as lending. In the provision of credit, loan services are also provided to recipients of credit (debtors) in the form of interest and administrative fees. As for banks that are based on sharia principles, the term is based on profit sharing or equity participation.

Besides collecting funds in the form of deposits (demand deposits, savings, and deposits) and channeling funds in the form of loans, banks also carry out other banking services. These services are provided to support the smooth activities of raising funds and channeling funds, both those directly related to savings and credit activities and indirectly, including Transfers, Collections, Clearing, Bank Notes, Safe Deposit Boxes, Travelers Checks, Bank Cards, Letters of Credit, Bank Guarantee.

So, what is called a bank interest? Lexically, interest as a translation of the word interest. In terms of it can be said that bank interest is "A charge for a financial loan, usually a percentage of the amount loaned." Interest is dependent on money loans, which are usually expressed as a percentage of money lent. Other opinions state that "interest is the amount of money paid or calculated for capital use." This amount, for example, is expressed by one level or percentage of capital relating to it, which is now often known as the "capital interest rate." (Muhammad, 2000:23).

Among economic experts, there is a difference between usury and bank interest; it is said that usury is for loans that are cosmic, while interest is for productive loans. Likewise the term usury and interest, that usury is a very high loan interest, so it exceeds the interest rate permitted by law. While interest is relatively low loan interest. But in reality or practice, according to Maulana Muhammad Ali, it is difficult to dissect between usury and interest because in essence, both are both burdensome for borrowers (Zuhdi, 1998:45).

Therefore, if you draw history lessons from Western society, it is clear that "interest" and "usury" that are known today have similarities, although they also have differences. The similarity between the two is extra money, generally in percentages. The term usury arises because the financial markets have not been established at that time, so the authorities must set an interest rate that is considered reasonable. But after the establishment of

financial institutions and markets, both terms were lost because there was only one interest rate in the market that was by the law of demand and supply.

Based on the description above, the researcher argues that what is called bank interest is an additional amount of money that must be paid based on the percentage of loans given by the bank to the debtor or borrower of money in the bank. In daily activities in the banking world that apply conventional principles there are two types or types of banking interest, namely:

### **Deposit Interest**

Deposit interest is interest given by the bank as a stimulus or remuneration for customers who save their money in a bank. For example, demand deposits, savings interest rates and time deposits. Interest on deposits can also be interpreted as the price that must be paid by the Bank to customers who have deposits at the bank.

### **Interest on Loans**

Interest on loans is interest or remuneration paid by borrowing customers or debtors - for example, people who get credit from banks - to banks. For example, interest on investment loans, working capital loans and trade loans. Interest on loans can also be interpreted as the price that must be paid by the debtor for a credit loan to the Bank.

Both types of interest are the main components of cost factors and income factors for the bank concerned. Deposit interest is the cost of funds that must be paid to customers who save their funds in the bank, while the loan interest is income received from customers who have obtained credit from the bank. Both deposit interest and loan interest, each influence each other. For example, if the interest on deposits is high, then the interest on the loan will also be affected, too, and vice versa, the lower the interest on deposits, the interest on the loan will also come down (Kasmir, 2010:132).

### ***THE MECHANISM OF DETERMINING THE INTEREST SYSTEM IN CONVENTIONAL BANKS***

Banking is a business entity engaged in buying and selling money. To be able to live and develop, the bank buys funds or money from the public and other parties, for example, from Bank Indonesia called Liquidity Credit. The point is that for depositors and Bank Indonesia, they will be given remuneration for the use of these funds, which are referred to as interest. To be able to repay services or interest paid to depositors, the bank will also lend these funds in the form of loans to the people who need additional business capital (not initial capital) for investment, working capital, and trade. For the business profits obtained by the debtor by using or using credit from the bank, the debtor shows commendable action by providing remuneration or interest for the use of the funds to the bank concerned.

The excess in interest received by the bank from the debtor with interest paid to the depositors at the Bank becomes benefits for the Bank. These advantages that are used by the Bank to cover operational costs include employee salaries, employee medical expenses, promotion costs, building costs, motorized vehicle fees, electricity/water costs, and so on.

Also, if the fund depositor asks for returns the funds, the Bank must return it without reason. This means that even if the customer's deposit has been lent in the form of a credit to the debtor, and the debtor for some reason cannot return the debt to the Bank, the Bank must and must return the money/deposit. From this description, we can find out how urgent interest is in banking. If there is no interest instrument, it is likely that the bank will not be able to survive. And in general, in an area where there are no banks operating there, the result is that the city will lag behind or not develop.

In this section, the author will discuss several important points relating to the mechanism of applying the interest system to conventional banks, which will be briefly explained in this paper. Before explaining how the mechanism of determining the interest system in a conventional bank, it will first be discussed about the components that affect the size of the interest rate. The components in determining the number of interest rates are as follows:

### **Total Cost of Fund**

The total cost of funds is the total interest incurred by the bank to obtain deposit funds, both in the form of deposits, savings, and deposits. The total cost of these funds depends on how much interest is set to obtain the desired funds. The greater the interest charged on deposit interest, the higher the cost of funds. And vice versa, the smaller the interest charged on deposit interest, the smaller the cost of funds. The total cost of these funds must be reduced by a mandatory reserve or Reserve Requirement (RR) that has been set by the government. At this time the amount of RR set by the government is 5%.

### **Operational Costs**

In conducting business activities, each bank needs various facilities and infrastructure, both in the form of humans and in the form of tools. The use of these facilities and infrastructure requires several costs that must be borne by the bank as operational costs. This operational cost is the cost incurred by the bank in carrying out its operations. These costs include the costs of employee salaries, administrative costs, maintenance costs, and other costs.

### **Reserve the Risk of the Terminated Credit**

The reserve risk of the terminated credit is a reserve that is prepared against the default of credit to be given; this is because the credit that is realized must contain a risk not paid. This risk arises either intentionally or

unintentionally. Therefore, the bank needs to reserve it as a caution to deal with it by charging a certain percentage of the loans which will be disbursed.

### Expected Profit by the Bank

In conducting each transaction, the bank always wants to get or get the maximum profit. Determining the desired profit is determined by several important considerations, given the determination of the amount of profit greatly affects the amount of credit interest rates. In such situations, banks are usually seen in the condition of competing banks, also see the criteria for prospective customers, whether prime customers or not, and also look at the sectors that are financed, for example if the fund is a government project or for entrepreneurs or small people, then the loan interest rates will be lower, in contrast to commercial loans.

### Tax

Tax is an obligation imposed by the government on banks that provide credit facilities to their customers. To more easily understand the charging of interest rates, here is an example of the components of charging interest rates in determining credit interest rates. For example, PT. The Conventional Bank Branch Office A District B determines the deposit interest rate of 12% PA to its depositors. Mandatory reserves (RR) set by the government are 5%. Then the operational costs incurred are equal to 5%, and the reserve risk of bad credit is 1%. The desired profit, for example, is 5%, and the tax is 20%. Calculate what the loan interest rate is (based lending rate) for the debtors (borrowers).

$$\begin{aligned}\text{Cost of Fund} &= \frac{\text{Interest charged}}{100\% - \text{Obligatory reserve}} \\ &= (12\%) / (100\% - 5\%) \\ &= (12\%) / (95\%) \\ &= 12,63\%\end{aligned}$$

So the 12.63% Cost of Fund is rounded up to 13%.

To calculate the loan interest given are as follows:

The total cost of funds .....	13%
Total operating expenses.....	5%
Backup for terminated credit risk .....	1%
Desired profit .....	5%
Tax 20% of profit (5%) .....	1%
Interest on loans (based lending rate) .....	25%

This is a description of the mechanism for determining interest rates at conventional banks. While the main factors that influence the size of the interest rate setting are as follows:

### ***The Need for Funding***

If the bank lacks funds, while the loan application increases, then what the bank does to the funds are quickly met is by increasing deposit rates. Increasing deposit rates will automatically increase the loan of interest rates. However, if the deposit is large, while the loan application is small, the deposit interest will be decreased.

### ***Competition***

In fighting for deposit funds, besides the promotion factor, the most important thing banks must pay attention to it is the competing banks. In the sense that if the deposit interest is an average of 1% per month, then if the bank wants to get a fast fund, the deposit interest should be raised above the competitor's interest, for example, 1.25% per month. However, on the contrary for loan interest rates must be below the competitor's bank interest rate so that the funds available in the bank can be channeled to the people who need additional capital for the development of their business.

### ***Government Policies***

The point is that for both deposit interest and loan interest, the bank must not exceed the interest which is set by the government. The point is that there are maximum and minimum limits for the interest rates permitted by the government. The goal is to set maximum and minimum limits for interest rates so that banks in Indonesia can compete healthily.

### ***Profit Target Desired by the Bank***

The profit target of the bank is one of the crucial factors in determining the size of the loan interest rate. If the desired profit is large, then the interest on the loan is large, and the deposit interest is pressed as small as possible, and vice versa, by the desired profit target. However, to face a competing bank, the profit target must be reduced to a minimum.

### ***Duration***

The term of the loan or credit or deposit determines the high and low-interest rates. So longer the loan period, then so higher the interest rate, this is due to the large possibility of future risks. Vice versa, if the loan is short-term, the interest will be relatively lower. However, for deposit interest (Demand Deposits and Savings) depending on the size of the current account and savings account, the greater the balance, the greater the percentage (%) of the interest rate. As for deposits, the longer the period, the greater the percentage (%) of interest.

## ***THE BANK INTEREST LAW IN THE PERSPECTIVE OF USHUL FIQH***

Before discussing the bank interest law, according to ushul fiqh, it will first be explained the debates among Muslim scholars related to the bank interest law.

### **The opinion of the Ulama Concerning the Bank Interest Law**

As explained earlier that regarding the bank's interest law, the scholars differed into three groups, namely forbidding opinions, justifying opinions, and opinions that considered it the law is shut.

#### ***Opinions that Forbid***

In the opinion of this group bank interest is the same as usury, so the law is haram. They postulated with the Qur'an Surat al-Baqarah (2) verses 275-276, Ali Imran (3) verse 130, and al-Rum (30) verse 39. In the translation of the Qur'an, it is stated that what is meant by usury here is *riba nasi'ah*. According to most scholars that *riba nasi'ah* is forever unclean even though it is not multiplied. Those who forbid bank interest say that *illat* (a sign of law or motive of law) of forbidden usury is an additional loan, regardless of the amount. So according to them *illat* of the prohibition of usury is an addition, whereas, in loans and deposits at the bank, there is always an addition to the principal. So because of the similarity between the legal nature of bank interest and usury, this group considers bank interest equal to usury, so the law of bank interest is haram.

The opinion was expressed among others by the great scholars of Pakistan Abul A'la al-Mawdudi, the lawyer in Islamic Cairo Congres Muhammad Abdullah al-Arabi, as well as leading contemporary scholars Muhammad Abu Zahra. They said that bank interest, including usury *rice'ah*, was prohibited by Islamic shari'a. Therefore Muslims should not live with banks that use the interest system, except in emergencies or forced by a difficulty (Syafe' i, 1999:274).

In the view of scholars who forbid other bank interest, the notion of emergency is initially a condition which if left behind will result in loss of life. The bank's emergency right now does not reach the extent of the Muslims. This means that if the Muslims in their activities are not at all related to the bank, the condition will not perish, only they will experience difficulties. The famous contemporary ulema of the Shiite school, Murtadha Muthahari, argues that every usury is unlawful, whatever its type and form, including bank interest. According to him, the bank's interest is the same as usury, and according to him the savings in the bank or deposit reflect the practice of cooperation in sin because the customer knows clearly that the money will be loaned in interest by the bank to others (Muthahari, 1984: 234).

According to the MUI, the interest on money on loans (*qardh*) that applies above is worse than usury, which is forbidden in the Qur'an, because

in additional usury only is imposed at maturity. Whereas in the interest system, the additional has been directly charged since the transaction occurred (MUI's fatwa No.1, 2004, concerning Bank Interest law in Islam.).

The stipulations regarding bank interest prohibition were also stated by several national and international fatwa institutions including Majma' al-Buhus in al-Azhar Egypt in May 1965, Majma' OIC state al-Fiqh al-Islami held in Jeddah on 10-16 Rabi'ul Awwal 1406 H / 22-28 December 1985, Majma' Fiqh Rabithah al-Alam al-Islami in the decision of the session held in Mecca on 12-19 Rajab 1406 H, decision of Dar al-Ifta' Arab kingdom Saudi in 1979, as well as Supreme Court Pakistan's decision on December 22, 1999.

### *Opinions that Justify*

As a view that forbids bank interest, the view that justifies bank interest is based on the qiyâs method also. It's just that there are differences in determining the legal condition. Ulama who forbid bank interest argues that illat law is prohibited usury is the addition of the levied along with the principal. Whereas scholars who justify bank interest argue that the *illat* law of usury is not just an addition, but an addition that contains *zulm* or extortion.

The group that says that bank interest is halal they argue that bank interest is not the same as usury, so it is not illegal. According to them illat law forbidden usury does not exist in the bank interest because the additional or interest that is deducted from the loan or additional given by the bank from customer deposits is done based on willingness, and no one feels squeezed. Also, there is no one in the bank's interest system, namely the suspension of payments, because payments are always made based on time according to the agreement of the bank and the customer so that the addition in the interest system cannot be said as usury.

Sheikh Rasyid Ridha, in this matter, argues that usury, which is forbidden by the Qur'an is usury, which is multiplied from the amount of principal debt given (Ridha, 1376 H:113). That means bank interest is not usury because it does not multiply from the principal amount. Sheikh Azhar Sayyid Thantawi who is also a former of the grand mufti disagreed with his predecessor, Sheikh Jad al-Haq. Thantawi stated that the interest on time deposits at the bank, which was set at a large percentage of interest, was not illegal according to Islam. This fatwa is in line with what was written by Ridha in Tafsir al-Manar, "It does not include usury someone who gives others money to invest while determining for him from the results of the business a certain level because such transactions benefit capital owners and managers. The usury that is forbidden harms one party for no reason and benefits the other without effort."

Other scholars included in this group are Ahmad Hasan, founder of Persis, arguing that bank interest, especially in Indonesia, is not included in the usury category which is forbidden by the Qur'an. Because in the banking system with the interest system, according to him, there was no element of

persecution. Likewise, with the Nahdhatul Ulama organization through its fatwa institution, Bahtsul Masa'il, who argues that the interest system applied by both conventional and government-owned banks is not including usury, so it is not haram. Opinions about the legitimate bank interest were also stated by Abdul Hamid Hakim, Mustafa Ahmad Zarqa, and Syafruddin Prawiranegara, a Masyumi figure. According to Syafruddin, bank interest is not usury because basically bank interest is a service that is issued or collected from funds to finance bank administration. Apart from not being able to find an element of extortion in the interest system, it was also due to the mutual willingness at the beginning of the contract between the two parties, namely the bank and the customer. This is different from usury, where there is no willingness on the part of the debtor (Hadi, 2015:76-77).

Regarding the funds which collected from bank customers for administrative purposes, such as paper requirements, and operational costs, the fee essentially interests, so the problem is not much different from the issue of bank interest. Ulama who forbid bank interest, then they forbid the levy because it means that it is an advantage, namely by taking advantage of a debt transaction. Strictly speaking, they consider the levy to be usury, even though it is used for operational funds. The scholars who justify bank interest because the bank is an emergency or other reason, they also say that both bank fees and interest do not include usury. Therefore the law may. Besides that, they reasoned that without both, the bank could not operate. Then the existence of something as a tool is the same as the law with the existence of origin. In this case, the bank levy law is the same as the bank interest, i.e., may (not including the usury category).

Based on the description above, the opinion that justifies bank interest is in accordance with the thinking of an Intellectual and Modernist Ulama Joesoef Sou'yb, where conventional bank interest as long as within the reasonable limits, does not multiply and equally benefits both parties (banks and debtors), and has social and economic functions, not including the category of usury as referred to in QS Al-Rum / 30: 39, Q.S. An-Nisa / 4: 160-161, Q.S. Ali Imran / 3: 130, Q.S. Al-Baqarah / 2: 275, Q.S. Al-Baqarah / 2: 276-278, and Q.S. Al-Baqarah / 2: 279-280 (Hadi, 2015:76-77).

### ***Opinions that are Saying Syubhat***

Among the third view of the bank, interest law is the view that states that the interest of the legal bank is concerned. This means that it could be illegal, but it could be lawful. One of those who argued this was the Majelis Tarjih Muhammadiyah. Muhammadiyah uses qiyâs as a method of ijtihad in response to bank interest. For Muhammadiyah 'illat the prohibition of usury is prohibited by the exploitation or persecution (zulm) of borrowing funds. Consequently, if 'illat is in the bank's interest, then the bank's interest is the same as usury, and the law is usury. Conversely, if 'illat is not in bank interest, then bank interest is not usury, so its law is not haram.

In Muhammadiyah's opinion, 'illat of the prohibition of usury is allegedly also found at the bank interest, so bank interest is equated with

usury and its law is haram. But the decision only applies to private banks. The bank interest is given by the state-owned bank to its customers or vice versa, including the case of the seen business, is shubhat matter (not haram and not halal). Muhammadiyah's opinion refers to the results of the Muhammadiyah Assembly Council Conference in Sidoarjo, East Java, which decided in 1968: *First*, usury is forbidden with the shariah al-Qur' an and as-Sunnah. *Second*, banks with usury systems are haram, and banks without usury are halal. *Third*, interest is given by a state-owned bank to its customers or vice versa, including the case of the doubt (which is doubtful/shubhat). *Fourth*, Advise to Center Leaders of Muhammadiyah to try to realize the conception of the economic system, especially banking institutions, which is by the Islamic rules.

Muhammadiyah seems to have doubts about the existence or absence of 'illat riba in state-owned banks, this can be seen from the stipulation that the interest law of the state-owned bank is seen. The reason for saying musytabihat is because there are two trends, namely halal or haram, also, because the bank is not differentiated between people who borrow money for consumption and borrow for production. So this should be avoided, except in an emergency (forced). It seems that Muhammadiyah's decision is in line with the opinion that bank interest may be due to an emergency, such as the opinion of Mustafa al-Zarqawi, who said that the bank is an unavoidable reality. Because of this, Muslims may deal with the bank based on emergency. Furthermore, Muhammadiyah stated that usury, which is forbidden by religion is the nature of flowering, which is always accompanied by elements of opportunity abuse and oppression. Whereas what applies today does not cause any feeling of oppression or disappointment by anyone who has an interest.

Therefore the limitation of the emergency about this problem is somewhat loosened, that is, not just for continuing life, but extended to the needs of clothing and shelter. This view, according to the author, is very relevant to current conditions, where the need for shelter can be very important and urgent as important and urgent needs for food and beverage ingredients for human life. This is based on what Imam al-Syatibi said as quoted by Syabirin Harahap as follows:

"Suppose we have been chained by the illegitimate so that all the halal roads of the company are closed, and the needs of Muslims are not enough if just connecting lives, then the allowance is the required level of food, clothing, and residence. Because if it is limited to just connecting lives, then all the doors of the company will be closed and the work of all Muslims will be stopped. This situation certainly brings Muslims to suffer even more until they perish, which means the collapse and destruction of religion (Harahap, 2014: 94).

If seen more realistically, what is referred to as the Hurriyat needs of modern society at this time is not only limited to the need to survive, such as fulfilling the needs of food and drink alone but for the maintenance of soul or life. A clean, healthy, and safe place to live. Because with the fulfillment of a clean, healthy, and safe place to live, the soul or life will be well

maintained. Therefore the concession as intended above in the opinion of the author is very necessary for the context of today's life.

### Ushul Fiqh Perspective

When viewed from the perspective of its *ijtihad* methodology, both the *ulamas* who forbid, the scholars who justify it, and the scholars who consider the law of bank interest is *shubhat*, they both argue using the *qiyâs* method. There are many definitions of the notion of *qiyâs*, each of which has different terminology terming it, although there are similarities in the substance of its meaning. The definition used by the majority of scholars is:

The meaning is: Bringing a new case that has no law to the case already contained in the law in the *nash*, to establish or eliminate the law for both, based on the similarity of the law or the nature found in both (*al-Subkhî*, n.d.:2157).

The above definition explains that the essence of *qiyâs* activities is to compare the law of a new act with the law of something that has been determined in a text based on a characteristic or motive that is a legal reason, whether the reason is mentioned in the text or not. Therefore, in the activity of *qiyâs*, there must be several elements as follows:

“*Ashl*, it is a legal case where *far ' (a new case that has no law) is analogous. Ashl must be a case that has been explained by the law in both the Qur'an and Hadith maqbûl (Hadith that can be accepted as a legal basis)” (al-Ghazâlî, n.d.:671).*

“*Far ' , which is a new case where there is no legal explanation in the text. The way to determine Far 'law is to analogize with the ash1 which is clear in its legal provisions on the basis of the same nature or legal motives contained in both. Far 'by some ushûliyun commonly referred to as "a Parelel case" (Hasan, 1986: 16).*

“*Illat*, it is a legal reason that underlies the legal provisions for *ashl*, which can be derivated to a new case that has the same legal reasons as *ashl*. In this discussion, *illat* of the bank interest law is *ziyâdah bi lâ'iwadh* (additional without being accompanied by replacement) or *ziyâdah ma'a zulm* (additions accompanied by an element of extortion).”

“Originally law of *ashl*, it is the law of *ashl*, which can be implemented to *far ' because the similarities of it's illat (al-Sa'dî, n.d.:63). In this discussion, the law of ash1 is the law of riba, namely haram”.*

The four elements, as mentioned, must be in the operation of *qiyâs*. If one of them is not there, then legal *ijtihad* cannot be done by using the *qiyâs* method.

The majority of scholars agree that *qiyâs* is proof that the source is from the Qur'an and Sunnah to determine the law of a new case that has not been determined by *nash*. Even the majority of scholars say that worship

with the results of *ijtihad* from *qiyâs* is permissible and for new cases, it is obligatory to practice it (establishing a law with the method of *qiyâs*). As said by al-Subki, that *qiyâs* is part of religion, because *qiyâs* is a direct order from the maker of the law (*syâri'*) (Zuhaili, 1406 H:607). Nevertheless, some scholars as *Zhâhiri* school which was led by Ibn Hazm rejected *qiyâs* both as a source of law and as a method of establishing Islamic law. Ibn Hazm's refusal of *qiyâs* is based on the arguments of the Qur'an and Hadith, besides that he denies the existence of *ijma'* by shahabah where according to the claims of supporters of *qiyâs* as the basis of legality *qiyâs* (Tohari, 2016).

As for how the *qiyâs* works when it is related to the views of scholars about conventional bank interest laws are as follows:

*First*, the opinion that prohibits bank interest assumes that *'illat* of *riba* is in bank interest, that is, there is an additional element in the principal loan in the form of interest because of the extension of time given by the bank to the customer. Therefore according to this group bank interest is the same as usury, so it is haram.

*Secondly*, the opinion that justifies bank interest argues that *illat* is forbidden from usury, not just the addition, but it is *ziyadah maa zulm*, which is an addition accompanied by extortion to the borrower. Thus it can be said that when the additional loan transaction is not accompanied by *zulm* or extortion, it does not include usury, because also not *illat*, which causes the prohibition of usury. According to this group, *illat* is not found in the bank interest. Therefore it's law is halal because bank interest is not the same as usury.

*Third*, the opinion that considers the bank interest law is *shubhat*, because according to them bank interest has an element of similarity as well as an element of difference with usury. Therefore, it's law is *shubhat*.

Of the three opinions, it is necessary to see which opinion is the strongest? To find out the strongest opinion, the writer would like to do an analysis using the principles of *fiqh*.

In the science of jurisprudence, there is a law which reads: "*The law of origin in all forms or muamalah business is permissible, unless there is a proposition that forbids it.*"

Whereas basically all forms of transactions are permissible and lawful, so there is a argument that changes the law of halal to be illegitimate. Of course this also applies to banking transactions that use the interest system, wherein the transaction is basically halal, unless there are other arguments that can prohibit it. Now let's look at the next *fiqh* rules related to this: "*Belief cannot be lost by doubt*" (Nujaim, n.d.: 57).

The above law affirms that a convincing law cannot be erased or eliminated by a law that is uncurtain. If it is related to bank interest law, the convincing thing is the original law, namely the halal law. To be able to

change the halal law, it is necessary to have a convincing law that showed by sharih and shahih nash which explicitly states its prohibition. But the fact is, because bank interest is a new case, it is not found sharih and shahih nash that mention its prohibition. Therefore the scholars used the qiyâs method to determine the bank's interest law as described above. So, once again forbidding bank interest does not come from sharih and shahih nash, but comes from the results of the ulama's ijihad with the qiyâs method.

Then, can the illegitimate laws generated from qiyâs be categorized as qath'î, or convincing as required as a law that can change the halal banking transactions with the interest system to be illegitimate? According to the jumhur of ushul fiqh, among them Imam Fakhrudin al-Razi, that in the view of al-Râzî, the law resulting from the use of the qiyâs method is zhanni's legal nature. According to him, the power of law from the results of the use of the qiyâs method is parallel to the power of law based on the ahad Khabar (al-Râzî, n.d.: 122). Therefore, although the number of scholars acknowledges the existence of qiyâs, the results of ijihad from the qiyâs method must be placed properly, namely as the Zhanna proposition.

Based on the legal position resulting from the use of qiyâs, the author argues that the law of transaction permits or muamalah including banking transactions with the interest system cannot be eliminated by the illegitimate laws that are claimed by the scholars. Because what is convincing is the law, it is permissible for the transaction, while the one which forbids is the law of zhanni, which is the law that comes out from the use of the qiyâs method. So if this problem is seen based on the reasoning of the fiqh principles, the opinion that justifies bank interest is a stronger opinion according to the author. Because once again, belief can only be removed with certain knowledge, a convincing law (qath'î) can only be removed by a convincing law (qath'î) as well.

However, the halal nature of the bank's interest, if it can be removed, can even turn out to be haram when a banking transaction is found to be a definite liability (qath'î). For example, in the transaction, the customer is burdened with high interest, which according to economic theory is not reasonable, so that it is difficult to pay off the principal debt to the bank, which then can cause loss of property owned.

Thus, when there is no Nash qath'i which can be used as an argument to ban a form of transaction, then it should be returned to its original law, namely halal. Henceforth, the halal and prohibition of a banking transaction should be seen from the aspect of benefit and harm. This author's opinion seems to be relevant to a Hadith of the Prophet, which later became a qaidah in the science of fiqh, which reads: *"It may not be dangerous and should not be harmed."* (Hadith riwayat by Hakim from Abu Sa'id al-Khudri, riwayat by Ibnu Majah from Ibnu Abbas).

The bank is a respectable institution, and the interest system is a bank mechanism for managing the circulation of public capital. Community members who have capital can even be encouraged to leave their capital that is not used at any given time. Then the bank lends these funds to other

community members who need business capital for a certain period. Community members who borrow funds from banks are generally used as business capital, not to meet consumptive needs. With this capital, the entrepreneur who borrows funds will benefit from the business financed by the bank.

By depositing money or capital with the bank for a certain period, the owner of the capital will lose his right to use the purchasing power of his wealth for the same period. On the other hand, the borrower from the bank, which is none other than from the deposited money, gets the right to use the purchasing power of the borrowed funds, and the use of these funds for business capital will bring benefits. It is not uncommon for the money to change hands for the time being to cover a large number.

Based on the principle "*It may not be dangerous and should not be harmed*", it is unfair if the original owner of capital who loses the right to use his purchasing power for a certain period of time does not receive compensation or compensation from his "sacrifice", while the borrower uses it to business capital and luck it does not have to share its profits with the original owners of capital. In a reasonable and healthy loan lending agreement, the amount of interest that must be paid to the original owner of the capital is calculated in such a way that it is only a part of the total profit received by the borrower.

One of the reasons stated by the people about the illegitimate interest system is because the number or presentation of interest has been determined in advance. So as an alternative, a profit-sharing system is offered, which means that the profit and loss of the company will be calculated later, then divided between the original owners of capital and capital users, both profit and loss. But the management of the revenue sharing system is far more complex and inefficient.

Indeed, the loan borrower can fail and lose money in his business, but in general, the community accepts well and feels benefited by a healthy interest system in banking. Determination of the amount of interest presentation that will be accepted gives a definite feeling to the owners of capital. This lack of certainty found in "Islamic" banks that do not impose an interesting system is one reason why banks find it difficult to attract capital.

It is true that Islam calls on its people who have the advantage of sustenance to help lend money to neighbors or anyone in need without expecting profits, and do not ask for more than they lend. But this appeal becomes irrelevant if the capital transferred for the time being includes large amounts and for venture capital, not to meet family consumptive needs. Because usually people who borrow money in banks in large numbers such as entrepreneurs who borrow millions and even hundreds of millions are not poor people who need help for their lives as recommended to be helped, but they are people who own assets that can be used as collateral for the loan. So once again, the concept of helping siblings in need should not be placed in this context.

In this context, it seems the opinion of Sheikh al-Azhar Sayyid Thanthawi, the former Great Mufti of Egypt, found its relevance. He said that the interest on time deposits in the bank that had been set the amount of its presentation beforehand (at the time of the contract) was not haram according to Islam. (Sjadzali, 1997: 16). The Sheikh's opinion according to the author is more in line with the concept of contract in Islam where between the customer and the bank are both pleased with the agreement and have understood the contents of the agreement and the rules that must be followed together. This opinion is also in line with the concept of maintaining the property in Maqashid Shari'ah rather than an opinion that forbids bank interest because in this case there is no party who is harmed using fraud or extortion, this is evidenced by an agreement by both parties in the contract in question.

## CONCLUSION

The scholars have a different opinion on bank interest law. The scholars have a different opinion on bank interest law. Those who forbid argued that bank interest has in common with usury, so it must be forbidden. As for those who justify bank interest argued that bank interest is not the same as usury, so its law is halal. As for those who consider it as a shubhat thing, because in their view, the bank's interest besides having similarities with usury, also has several differences, so its law is *shubhat*. The bank interest law when viewed from the perspective of ushul fiqh, then both those that forbid, which justify, or those that consider syubhat, all of which do not originate from the qath'î, but zhannî propositions because they come from the results of ijtihad using the qiyâs method. Because of the absence of the qath 'argument, the author argues that the new direction to determine the halal-haram law of banking transactions with the interest system should be assessed from the large or small level of benefit (*maslahah*) and harm (*mudharat*) arising from the transaction. The researcher self is more inclined to the law of halal on conventional bank interest law when the contract is intended to procure a business capital, not to meet the needs of daily living.

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