

# THE DEVELOPMENT OF SHARIA ECONOMIC AND FINANCE FATWA IN INDONESIA

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## **Abstrak**

Perkembangan ekonomi dan keuangan syariah dalam bentuk kehadiran berbagai lembaga keuangan syariah memberi kesempatan yang sangat besar bagi implementasi nilai-nilai syariah Islam dalam berbagai aktivitas *ekonomi dan keuangan umat Islam*. Dalam rangka menjaga keterkaitan lembaga keuangan syariah dengan nilai-nilai syariah maka praktik lembaga keuangan syariah dipandu oleh fatwa ulama. Untuk konteks Indonesia, fatwa di industri keuangan syariah diterbitkan secara kolektif oleh ulama di Dewan Syariah Nasional yang telah menerbitkan 86 fatwa yang memandu operasi dan praktik lembaga keuangan syariah di Indonesia. Persoalan yang patut diwaspadai justru ada pada sifat tidak mengikat fatwa. Persoalan ini diselesaikan dengan formalisasi fatwa-fatwa ekonomi dan keuangan syariah ke dalam regulasi nasional. Relasi antara pemerintah dengan otoritas penerbit fatwa ini merupakan hubungan simbiosis mutualisme yang memberikan manfaat bagi semua pihak.

**Kata kunci:** lembaga keuangan syariah, fatwa, Dewan Syariah Nasional, simbiosis mutualisme.

## **A. Introduction**

Islamic banking, insurance, capital market, money market and other Islamic financial institutions are introduced in the Islamic modern world not only because Islam is a complete way for Muslim, but also because hundreds of years Muslims had lived under the other system that was not fully compatible with Islamic teachings. It has been a very big problem for Muslims to live under interest based economics and finance for a long time. The rejection of interest-based economics and financial system emerged other alternative that was believed more comply with Islamic teachings. The alternative economics and financial system was rooted from Islamic teaching to replace the Capitalist economics and financial system that was rooted from Western-Secular paradigm.

The emergence of Islamic economics and finance and its implementation in the Muslim world can be understood as a serious effort to Islamize the economics and financial activities of Muslims. The Islamization of economics and financial system is performed in evolution way by changing capitalist economics and financial objectives, philosophy, principles, instruments, and its institutions into Islamic teachings. During three last decades, Islamic teaching on economics and finance aroused considerable interest in the Islamic banking and financial institutions all over the world. Islamic economics and finance has demonstrated that it can replace its conventional counterpart because its viability and compatibility with Muslim modern need.

The existence of Islamic economic and financial institution was supported by fatwas that were issued by the Ulema to guide the practices of Islamic financial institutions. The fatwas clarify the Islamic ruling in an answer given to question or a set of questions related to Islamic economic and finance issues. Fatwa has a very important role in Islamic finance nowadays. It sets the rule on how Islamic financial institutions and its instruments were performed to comply with sharia Islam. The fatwa is issued through sharia board, individually, or through collective ijthad by sharia council or fiqh academy.

Today, the critical role of fatwa had been shown by the fast growing and development of Islamic economic and financial institution all around the globe, including in Indonesia. According to statistics published by the Financial Service Authority (OJK), as of September 2014, there were 11 Islamic banks in Indonesia with 2,139 offices. Twenty-three conventional banks have a Sharia "window" comprising 425 offices and there are 163 Islamic rural banks with 433 offices. Alongside with this growth of Islamic economic and financial industry, the fatwa in Indonesia had also increase in numbers. Until 2014, there are 86 fatwas that had been issued by the National Sharia Board regarding with Islamic economic and financial practices in Indonesia.

This paper is written to discuss the development of Islamic economic and finance fatwa in Indonesia. This paper is important to portray the information about many aspects related with the development of Islamic economic and finance fatwa in Indonesia. There are three main questions is meant to be answered in this paper. The first, how is the issuing process of the Islamic economic and finance fatwa in Indonesia. The second question, how is the statistical data of the Islamic economic and finance fatwa in Indonesia. The final question, how is the implementation of the Islamic economic and finance fatwa in Indonesia.

## **B. The Fatwa Issuing Mechanism In Indonesia**

Fatwa is defined as a decree by a competent *shari'ah* scholar qualified to issue decrees (*mufti*) on a matter giving an opinion about the position of a matter in the light of the *shari'ah* rules and principles.<sup>1</sup> It can be understood from this definition that fatwa is an opinion on Islamic law issued by an Islamic scholar. In the Qur'an, term of fatwa was issued in two verbal forms meaning "asking for a definite answer and giving a definite answer".<sup>2</sup>

In the early history of fatwa it was usually defined in the framework of a question-and-answer process to better communicate on Islamic matters. In this era, fatwa is pronounced by distinguished scholars (ulema) to provide guidance to the person who seek for the answer on how certain Islamic law can be understood or be applied. The criteria for

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<sup>1</sup> Muhammad Akram Khan, *Islamic Economics and Finance: A Glossary* 2n Edition, (London and New York: Routledge, 2003), 62.

<sup>2</sup> See Q.S. 4:127,176.

the scholars who were eligible to issue fatwa was very strict. The rules must be satisfied to produce a valid fatwa.<sup>3</sup>

Issuing fatwa usually is done within two types, first is individual fatwa (*fardhi*) and second collective fatwa (*jama'i*). Individual fatwa is fatwa that is issued by a distinguished scholar who is satisfied the rules to be a *mufti*. The collective fatwa is fatwa that is issued by collective scholars who are gathering in a fiqh academy body or sharia board. The function of fatwa is *tabyin* and *tawjih*. *Tabyin* means explaining for practical function of the fatwa on the subject that is questioned. *Tawjih* means guidance and enlighten for society to apply the fatwa in the real situation. The character of fatwa is responsive and non-binding. Responsive means fatwa is issued based on demand and questions from society. Non-binding means the issued fatwa is not binding for the party who demand for the answer or society unless it has been accommodated in the legislation or national positive law.<sup>4</sup>

In Indonesia, fatwas for Islamic financial practices are not issued by individual scholar, but they are issued by National Sharia Board (Dewan Syariah Nasional). Sharia National Board issued fatwas based on requests or questions from regulators such as Indonesian Central Bank (Bank Indonesia) and Indonesian Capital Market Supervisory Board (Badan Pengawas Pasar Modal), requests or questions from the Islamic industry players such as bankers, insurance operators, fund manager, and etc.

The *ijtihad* pattern of National Sharia Board to establish a fatwa can be identified as *qiyasi* and *istishlahi* method.<sup>5</sup> *Qiyasi* means the ulemas inserted all the reasoning that makes *'illat* (state or properties as the legal terminations) as their starting point. They tried to find the new *'illat* to revise the new laws, whereas *Istishlahi* is used for the particular case that do not have reference before. In this pattern, the general Quranic verses are collected in order to

some principles (general), which is used to protect or bring specific benefit. The general principles then be deducted to the new case.

In issuing the economic and finance fatwas, National Sharia Board has made provisions toward the establishment of a fatwa. The National Sharia Board fatwa issuing mechanism is following these steps:<sup>6</sup>

1. The Executive Agency (Badan Pelaksana Harian) of National Sharia Board accepts proposals or questions regarding the law on a product of Islamic financial institutions. The proposals or questions can be carried out by members of the financial institutions through Shariah Supervisory Board (Dewan Pengawas Syariah) or directly aimed at Executive Agency National Sharia Board secretariat.

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<sup>3</sup> Mughees Shaukat, *General Preception of Fatwa And Its Role In Islamic Finance Islamic Jurisprudence and Legal Maxims* (Kuala Lumpur: INCEIF, 2009), 7-8.

<sup>4</sup> Ma'ruf Amin, *Fatwa dalam Sistem Hukum Islam* (Jakarta: Elsas, 2008), 20.

<sup>5</sup> Rahmani Timorita Yulianti, "Pola Ijtihad Fatwa Dewan Syari'ah Nasional MUI tentang Produk Perbankan Syari'ah," *Fenomena*: Vol. 3 No. 2, September 2005.

<sup>6</sup> See M. Cholil Nafis, *Teori Hukum Ekonomi Syariah* (Jakarta: UI Press, 2011), 94-95.

2. The secretary of the secretariat should submit the proposals or questions to the chairman in a maximum of one business day after receiving the proposal or the question.
3. The chairman of the Executive Agency of National Sharia Board with members and experts staff must make a special memorandum at the latest within 20 working days prepared with the drafting and discussion of the question or the proposal.
4. The chairman of the executive agency brought the results discussed in the plenary meeting National Sharia Board to get approval in the next day.
5. The memorandum which has been approved by the plenary meeting set the fatwa of National Sharia Board. The fatwa signed by the chairman and secretary of National Sharia Board.

### C. The Structure of The Economic And Finance Fatwa In Indonesia

The economic and finance fatwas that had been issued by the National Sharia Board were formulated under a certain structure. In this paper I take the study case from National Sharia Board fatwa No. 80 of 2011 regarding the application of sharia in trading mechanism of equity securities at stock exchange regular market as the example. The National Sharia Board fatwas are opened with the title of the fatwa and the number. The fatwas are always opened by *bismillahirrahmanirrahim*. The first part of the fatwa is considerations. In the considerations, there are two main subjects to be considered i.e. socio-economic backgrounds and sharia arguments. The socio-economic backgrounds explained the socio-economic situation surrounded the economic and financial activities that need to be decided by the fatwa. For example in National Sharia Board fatwa No. 80 of 2011 regarding the application of sharia in trading mechanism of equity securities at stock exchange regular market. In the consideration, the fatwa was considered two points. The first point is the public curiosity concerning sharia suitability toward trading mechanism of equity securities at stock exchange regular market. This means that trading mechanism of equity securities at stock exchange regular market that had been practiced widely in Indonesia still became controversy. The industry players, regulators, and public seek for the answer whether equity trading securities at stock exchange regular market comply with sharia or not. The second point, it is considered necessary for National Sharia Board to determine a fatwa regarding the application of sharia principles in trading mechanism of equity securities at stock exchange regular market. This means that National Sharia Board need to issue fatwa regarding the application of sharia principles in trading mechanism of equity securities at stock exchange regular market to provide guidance for the industry players, regulators, and public.

The second consideration is observing the sharia and legal arguments related with the subject that was explained by the fatwa. For example in National Sharia Board fatwa No. 80 of 2011, it observed Quran verses al-Maidah/5:1, an-Nisa'/4: al-Baqarah/2: 275, an-Nisa'/4: 29, al-Qashash/28: 29, al-Maidah/5:2, al-Baqarah/2: 283. Then it observed Hadith of the Prophet Muhammad s.a.w. related with the issue. There are 9 (nine) hadith of the Prophet were observed in this fatwa. Then the fatwa observed fikih norms. There are 3

(three) fikih norms were observed in this fatwa i.e. basically anything in *mu'amalah* (human relation) is allowed, all *madharat* must be avoided, and all *madharat* must be eliminated.

After observing the arguments from Quran, Hadith, and Fikih Norms, then the fatwa was taking into account other factor that support the issuing of the fatwa. For example in National Sharia Board fatwa No. 80 of 2011, it was taking into account the Ulema perspectives related with the issue. There are 4 (four) ulema perspectives considered in this fatwa. The fatwa then took into account other National Sharia Board Fatwa related with the issue i.e. fatwa No. 20 of 2011 regarding guidelines for investment of sharia mutual fund, fatwa No. 40 of 2003 regarding capital market and general provisions of sharia principles implementation in capital market. The fatwa also took into account Law No. 8 of 1995 regarding capital market. The fatwa then took into account letter from Board of Directors of Indonesian Stock Exchange who demanded for the answer on this issue, report of National Sharia Board workshop with Indonesian Stock Exchange, and inputs and comments from members of Plenary Meeting of National Sharia Board.

After considering the socio-economic and the sharia arguments, the structure of fatwa is followed by the decision of the fatwa. The decision of the fatwa is the second part of the fatwa after consideration in the first part. For example in National Sharia Board fatwa No. 80 of 2011 it was written "has decided to enact the application of sharia principles in trading mechanism of equity securities at stock exchange regular market. The decision consists of some parts. *The first* part of the decision is general provisions that contained the definition and explaining of the words and terms that were written in the fatwa. For example in fatwa No. 80 of 2011 there are 31 (thirty one) words defined and explained. *The second* part of the decision is legal provision that contained the legal decision of the fatwa. In fatwa No. 80 of 2011 it written "trading mechanism of equity securities at stock exchange regular market *can be performed* under specific guidance. *The third* part of the decision is the specific provisions of the fatwa that provide the guidance for the implementation of the matter of the fatwa. In fatwa No. 80 of 2011 it contained the guidance for trading mechanism of equity securities at stock exchange regular market so that the trading can be performed i.e. about the guidance on how the securities trading should be performed, the guidance on how the securities trading mechanism should be performed, and the guidance on the actions which collide with sharia principles. *The fourth* is settlement of dispute. This part is standard that is written in all fatwas of National Sharia Board. In this part it is written "Parties agree that any dispute and disagreement arising as a consequence of the implementation of this Agreement shall, as far as possible, be settled by amicable deliberations. Any dispute which cannot be settled by amicable deliberation will be settled through Sharia Arbitration Board or subject to the prevailing laws and regulations under sharia principles." *The fifth* part of the decision is the closing. This part is also standard that is written in all National Sharia Board fatwas. In this part is written "This fatwa shall take into effect as from the enactment date, provided that in the event of misinterpretation in the coming years, it shall be properly amended and revised as necessary." At the end of the fatwa it is always written the place and the date of the fatwa is enacted and signed by the Chairman and the Secretary of National Sharia Board-Indonesian Council Ulema.

From the case study of National Sharia Board fatwa No. 80 of 2011 regarding the application of sharia in trading mechanism of equity securities at stock exchange regular market it can be observed that the structure of National Sharia Board fatwa can be summarized as follow:

No	Parts of National Sharia Board Fatwa
1.	The title of the fatwa
2.	The number of the fatwa
3.	Opening statement <i>Bismillahirrahmanirrahim</i>
4.	Considerations: <ol style="list-style-type: none"> <li>a. Socio-economic considerations</li> <li>b. Sharia and legal considerations                             <ol style="list-style-type: none"> <li>1) Quran</li> <li>2) Hadith</li> <li>3) Fikih Norms</li> <li>4) Ulema Perspectives</li> <li>5) Indonesian positive law</li> <li>6) Demand from the fatwa seeker</li> <li>7) Workshop result on the issue of the fatwa</li> <li>8) Inputs and comments from members of Plenary Meeting of National Sharia Board on the issue</li> </ol> </li> </ol>
5.	Decisions: <ol style="list-style-type: none"> <li>a. The enactment</li> <li>b. General provisions</li> <li>c. Legal provisions</li> <li>d. Specific provisions</li> <li>e. Settlement of Dispute</li> <li>f. Closing</li> </ol>
6.	Place and date of enactment
7.	Signed by the Chairman and Secretary of National Sharia Board

#### D. The Statistics of The Economics and Finance Fatwa In Indonesia

National Sharia Board was first established in 1998. From the first time it was established until 2012 National Sharia Board had issued 86 fatwas. The number of fatwas based on the issuing year can be seen in the table below:

*Tabel 1. National Sharia Board Fatwas based on the issuing years*

Year	Number of Fatwas	Percentage
2000	20 fatwas	23
2001	1 fatwa	1
2002	18 fatwas	21
2003	1 fatwa	1
2004	4 fatwas DSN + 1 MUI	6
2005	5 fatwa	6
2006	5 fatwa	6
2007	10 fatwa	11
2008	9 fatwas	10
2009	2 fatwas	2
2010	3 fatwas	4
2011	4 fatwas	5
2012	4 fatwas	5
<b>Total</b>	<b>86 National Sharia Board Fatwas + 1 MUI fatwa</b>	<b>100</b>

From the statistical table above it can be seen that the most active year for National Sharia Board in issuing fatwas was in 2000 and the second was in 2002. The table also showed that in 2001 there was only 1 fatwa was issued, so was in 2003. In 2004 MUI issued fatwa on interest (*faidah*) as *riba nasi'ah*. This table showed the dynamics of National Sharia Board fatwas that the number of issuing fatwa was various because fatwa was issued based on demand of the sharia industry players or regulators, or the society members who seek the answer.

If it was viewed from the theme of the fatwas, there were various fatwas than can be classified into some similar themes. The number of fatwa based on the themes can be seen in the table below:

Table 2. Fatwas Based on the Themes

No	Themes	Fatwas' Number and its title	Numbers of fatwa
1.	Tabungan	1) No. 1 (Giro); 2) No. 2 (Tabungan); 3) No. 3 (Deposito).	3
2.	Mudharabah	1) No. 7 (Pembiayaan Mudharabah /Qiradh); 2) No. 38 (Sertifikat Investasi Mudharabah Antarbank (Sertifikat IMA); No. 3) 50 (Akad Mudharabah Musytarakah)	3
3.	Musyarakah	1) No. 8 (Pembiayaan Musyarakah); 2) No. 55 (Pembiayaan Rekening Koran Syariah Musyarakah); 3) No. 73 (Musyarakah Mutanaqisah)	3
4.	Murabahah	1) No. 4 (Murabahah); 2) No. 13 (Uang Muka Murabahah); 3) No. 16 (Diskon dalam Murabahah); 4) No. 23 (Potongan Pelunasan dalam Murabahah); 5) No. 46 (Potongan Tagihan Murabahah (Khashm fi al-Murabahah); 6) No. 47 (Penyelesaian Piutang Murabahah bagi Nasabah Tidak Mampu Membayar); 7) No. 48 (Penjadualan Kembali Tagihan Murabahah); 8) No. 49 (Konversi Akad Murabahah); 9) No. 84 (Metode Pengakuan Keuntungan al-Tamwil bi al-Murabahah (Pembiayaan Murabahah) di Lembaga Keuangan Syariah).	9
5.	Salam dan Istishna'	1) No. 5 (Jual Beli Salam); 2) No. 6 (Jual Beli Istishna'); 3) No. 22 (Jual Beli Istishna' Paralel)	3
6.	Ijarah	1) No. 9 (Pembiayaan Ijarah); 2) No. 27 (Al-Ijarah al-Muntahiyah bi al-Tamlík (IMBT);	3

		3) No. 56 (Ketentuan Review Ujrah pada LKS)	
7.	Hutang dan Piutang	1) No. 19 (Qardh); 2) No. 17 (Sanksi atas Nasabah Mampu yang Menunda Pembayaran); 3) No. 31 (Pengalihan Hutang); 4) No. 67 (Anjak Piutang Syariah); 5) No. 79 (Qardh dengan Menggunakan Dana Nasabah).	5
8.	Hawalah	1) No. 12 (Hawalah); 2) No. 58 (Hawalah bil Ujrah)	2
9.	Rahn (Gadai)	1) No. 25 (Rahn); 2) No. 26 (Rahn Emas); 3) No. 68 (Rahn Tasjiliy).	3
10.	Sertifikat Bank Indonesia	1) No. 36 (Sertifikat Wadiah Bank Indonesia (SWBI)); 2) No. 63 (Sertifikat Bank Indonesia Syariah); 3) No. 64 (Sertifikat Bank Indonesia Syariah Ju'alah)	3
11.	Kartu Syariah (Sharia Card)	1) No. 42 ( <i>Syariah Charge Card</i> ); 2) No. 54 ( <i>Syariah Card</i> )	2
12.	Pasar Uang	1) No. 2 (Jual Beli Mata Uang ( <i>al-Sharf</i> )); 2) No. 37 (Pasar Uang Antarbank Berdasarkan Prinsip Syariah); 3) No. 78 (Mekanisme dan Instrumen Pasar Uang Antarbank Berdasarkan Prinsip Syariah)	3
13.	Asuransi Syariah	1) No. 21 (Pedoman Umum Asuransi Syariah); 2) No. 39 (Asuransi Haji); 3) No. 51 (Akad Mudharabah Musytarakah pada Asuransi Syariah); 4) No. 52 (Akad Wakalah bil Ujrah pada Asuransi Syariah dan Reasuransi Syariah); 5) No. 53 (Akad Tabarru' pada Asuransi Syariah); 6) No. 81 (Pengembalian Dana Tabarru' bagi Peserta Asuransi yang Berhenti Sebelum Masa Perjanjian Berakhir).	6
14.	Pasar Modal Syariah	1) No. 20 (Pedoman Pelaksanaan Investasi untuk Reksadana Syariah); 2) No. 40 (Pasar Modal & Pedoman Umum Penerapan Prinsip Syariah di Bidang Pasar Modal); 3) No. 65 (Hak Memesan Efek Terlebih Dahulu (HMETD) Syariah); 4) No. 66 (Waran Syariah); 5) No. 80 (Penerapan Prinsip Syariah dalam	5



		Mekanisme Perdagangan Efek Bersifat Ekuitas di Pasar Reguler Bursa Efek)	
15.	Obligasi Syariah	1) No. 32 (Obligasi Syariah); 2) No. 33 (Obligasi Syariah Mudharabah); 3) No. 41 (Obligasi Syariah Ijarah); 4) No. 59 (Obligasi Syariah Mudharabah Konversi)	4
16.	Surat Berharga Negara	1) No. 69 (Surat Berharga Syariah Negara (SBSN) 2) No. 70 (Metode Penerbitan Surat Berharga Syariah Negara (SBSN); 3) No. 72 (Surat Berharga Syariah Negara (SBSN) Ijarah <i>Sale and Lease Back</i> ); 4) No. 76 (Surat Berharga Syariah Negara (SBSN) Ijarah <i>Asset to Be Leased</i> )	4
17.	Ekspor / Impor	1) No. 34 ( <i>Letter of Credit</i> (L/C) Impor Syariah) 2) No. 35 ( <i>Letter of Credit</i> (L/C) Ekspor Syariah); 3) No. 57 ( <i>Letter of Credit</i> (L/C) dengan Akad Kafalah bil Ujah); 4) No. 60 (Penyelesaiann Piutang dalam Ekspor); 5) No. 61 (Penyelesaian Utang dalam Impor)	5
18.	Multi Level Marketing (MLM)	1) No. 75 (Penjualan Langsung Berjenjang Syariah (PLBS); 2) No. 83 (Penjualan Langsung Berjenjang Syariah Jasa Perjalanan Umrah)	2
19.	Hasil Usaha dalam Lembaga Keuangan Syariah (LKS)	1) No. 14 (Sistem Distribusi Hasil Usaha dalam LKS); 2) No. 15 (Prinsip Distribusi Hasil Usaha dalam LKS)	2
20.	Pembiayaan	1) No. 29 (Pembiayaan Pengurusan Haji LKS); 2) No. 30 (Pembiayaan Rekening Koran Syariah); 3) No. 44 (Pembiayaan Multijasa); 4) No. 45: <i>Line Facility (at-Tashilat as-Saqfiyah)</i>	4
21.	Penjaminan	1) No. 11 (Kafalah); 2) No. 74: (Penjaminan Syariah)	2
22.	Miscellaneous Fatwas	1) No. 10 (Wakalah) 2) No. 18 (Pencadangan Penghapusan Aktiva Produktif dalam LKS) 3) No. 24 (Safe Deposit Box) 4) No. 43 (Ganti Rugi (Ta'widh) 5) No. 62 (Akad Ju'alah) 6) No. 71 ( <i>Sale and Lease Back</i> ) 7) No. 77 (Jual Beli Emas secara tidak tunai) 8) No. 82 (Perdagangan Komoditi Berdasarkan Prinsip Syariah di Bursa Komoditi) 9) No. 85: Janji (Wa'ad) dalam Transaksi Keuangan	10

		dan Bisnis Syariah) 10) No. 86 (Hadiah dalam Penghimpunan Dana Lembaga Keuangan Syariah)	
	<b>Total</b>		<b>86 fatwas</b>

From the table above, we can see there are 22 themes in the National Sharia Board Fatwas. Some of the fatwas are specific for certain financial institutions whereas some of the fatwas can be applied not only in banking sectors but also can be applied in other financial institutions such as capital market, insurance, and finance company.

### E. The Implementation of The Economics and Finance Fatwa In Indonesia

National Sharia Board Fatwas are used as the guidance for the sharia industry practices in Indonesia. National Sharia Board has sole authority to guarantee the sharia industry practices in Indonesia must satisfy the Islamic law. It means that National Sharia Board has the sharia compliant authority. Each sharia institutions in Indonesia must operate under the National Sharia Board fatwa rules and regulations. This has been ruled in The Law No. 21 of 2008 regarding Shariah Banking (it had been ruled too in the regulation before i.e. The Law No. 10 of 1992 and The Law No. 7 of 1998 regarding Banking).

However, all fatwas that had been issued by National Sharia Board were still non-binding if it is viewed from nation-state legal point of view. This is because National Sharia Board is not the national authority body for the sharia industry. The national legal authority for sharia industry in Indonesia is Indonesia Financial Service Authority (Otoritas Jasa Keuangan) that regulate sharia banking, sharia capital market, sharia insurance, sharia money market, etc. National Sharia Board fatwa will have the binding effect if the fatwa is formalized in the authority regulation such as OJK regulation (it was called regulation of Bank Indonesia and regulation of Capital Market Supervisory Board before both of them were merged into OJK).<sup>7</sup>

According to the data, most of the National Sharia Board fatwas had been formalized to regulate sharia industry. There are a number of regulations that had been issued by the financial regulator in Indonesia that had formalized the National Sharia Board fatwas. Here are the latest regulations from Bank Indonesia and Bapepam LK that had formalized the National Sharia Board fatwas.

<b>No.</b>	<b>Issued by Bank Indonesia (Indonesian Bank Central Bank)</b>
1.	The Law Number 21 of 2008 regarding sharia banking
2.	Bank Indonesia Regulation No. 15/13 / PBI / 2013 on Amendment to Bank Indonesia Regulation No. 11/3 / PBI / 2009 on Islamic Banks are further regulated in Bank Indonesia Circular Letter (SEBI) 15/50 / DPbS dated December 30, 2013 on the Amendment to Bank Indonesia Circular Letter No. 11/9 / DPbS April 7, 2009

<sup>7</sup> See M. Cholil Nafis, *Teori Hukum Ekonomi Syariah*, 108. Ma'ruf Amin, *Era Baru Ekonomi Islam Indonesia* (Jakarta, elsas, 2011), 175-196. Jaih Mubarak, *Perkembangan Fatwa Ekonomi Syariah di Indonesia* (Bandung: Pustaka Bani Quraisy, 2004), 2.

	regarding Islamic Banks;
3.	Bank Indonesia Regulation Nomor 15 / 14 / PBI / 2013 on Amendment to Bank Indonesia Regulation No. 11/10 / PBI / 2009 on Sharia Division further provided in Circular Letter of Bank Indonesia (SEBI) 15/51 / DPbS dated December 30, 2013 Amendment to Bank Indonesia Circular Letter No. 11/28 / DPbS October 5, 2009 regarding Sharia Division;
4.	Bank Indonesia Regulation No. 11/23 / PBI / 2009 on the People's Bank Syariah Financing (State Gazette of the Republic of Indonesia Year 2009 Number 101, Supplement to State Gazette of the Republic of Indonesia Number 5027), which is then regulated in Bank Indonesia Circular Letter No. 15/22 / DPbS dated June 27, 2013 on guidelines for the implementation of the duties and responsibilities of the Sharia Supervisory Board of Bank Financing Sharia.
<b>No.</b>	<b>Issued by Bapepam-LK (Capital Market and Financial Institution Supervisory Board)</b>
	<b>Sharia insurance:</b>
1.	PMK No. 18 / PMK.010 / 2010 Concerning the Implementation of Basic Principles of Insurance and Reinsurance Business Using Sharia Principles;
2.	Chairman of Bapepam-LK Regulation No. PER-07 / BL / 2011 on Guidelines for Calculation Amount Needed To Anticipate Risk Losses Tabarru' Fund Management and Calculation Amount Should the Company Provided To Anticipate Possible Risk Losses in the Implementation of Insurance Business and reinsurance with Sharia principles;
3.	Chairman of Bapepam-LK Regulation No. PER-06 / BL / 2011 on Form and Structure Reports Reports Announcements And Insurance Business and Reinsurance with Sharia principles;
4.	Chairman of Bapepam-LK Regulation No. PER-08 / BL / 2011 on Forms and Procedures for Submission of Monitoring Reports Sharia Supervisory Board On Insurance or Reinsurance Company Holding All or Most efforts with Sharia principles.
<b>No.</b>	<b>Sharia Capital Market:</b>
1.	The Law Number 19 regarding State Sharia Securities
2.	Bapepam LK Regulation No. II.KI in 2012 on Criteria and Issuance of Islamic Securities List
3.	Regulation of Bapepam LK No.IX.A.13 2009 on Issuance of Islamic Securities
4.	No.IX.A.14 Regulation of 2012 on-contracts Used In Issuance of Islamic securities in the capital market.

## F. Closing

It has been clear that sharia economic and financial industry is a growing industry in Indonesia. The growing of sharia industry in Indonesia is supported by the sharia fatwas issued by National Sharia Board. The statistical data showed that until 2012 there have been 86 fatwas were issued by National Sharia Board to guide the practical aspects of sharia industry. All sharia industry which operate in Indonesia must satisfy the rules on the National Sharia Board to be sharia compliant industry. It is the main task of National Sharia Board to ensure the sharia industry practice is compliant with Islamic law (fatwas).

However, National Sharia Board fatwa has non-binding character. The fatwa must go to the next step i.e. formalization in national legal regulation to have binding effect to the sharia industry. This problem had been solved because the Indonesian financial regulators had mostly accommodated the fatwas into their regulations.

This paper concluded that the development of fatwa in Indonesia is very conducive because the regulator support the industry as the alternate industry for Muslims community in Indonesia and for Muslim all around the globe. The government also plays critical role by accommodating the National Sharia Board fatwa into Indonesian positive law. The relationship between government and National Sharia Board as religious entity is so-called *symbiotic mutual relationship* that benefits all parties.

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