

**IMPLICATIONS OF THE APPLICATION OF DSN-MUI FATWA  
NO. 107/DSN-MUI/X/2016 CONCERNING THE GUIDELINES OF  
SHARIA HOSPITALS TO THE PURWOKERTO ISLAMIC  
HOSPITAL**



**THESIS**

**Submitted as Fulfillment One of the Requirements for the  
Attainment of the Degree of Sarjana Hukum (S.H)**

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2021**



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**IMPLICATIONS OF THE APPLICATION OF DSN-MUI FATWA NO  
107/DSN-MUI/X/2016 CONCERNING THE GUIDELINES OF SHARIA  
HOSPITALS TO THE PURWOKERTO ISLAMIC HOSPITAL**

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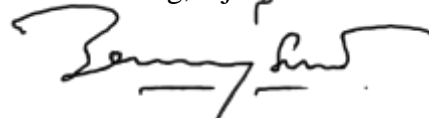
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Skripsi tersebut sudah dapat diajukan kepada Fakultas Syariah, Institut Agama Islam Negeri Purwokerto untuk diujikan dalam sidang munaqasyah dalam rangka memperoleh gelar Sarjana Hukum (S.H.).

Demikian, atas perhatian Bapak, saya mengucapkan terimakasih.

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**ABSTRAK**

A sharia hospital is a hospital whose administration is oriented towards sharia rules, especially the Maqasid Syariah. The management of sharia hospital not only aims at business goals or profits but also considers the implementation of sharia principles. The DSN MUI fatwa regarding the guidelines for the operation of sharia hospitals is present to answer the development of sharia trends that exist in social life. The guidelines provide various legal provisions, as well as references regarding hospital operation based on sharia principles. Purwokerto Islamic Hospital in Banyumas Regency has always paid attention to the principles of sharia in its hospital operation.

The method selected in this research is field research, in which the author went directly to the research objects (Purwokerto Islamic Hospital) to collect data. The normative approach was adopted to process and present data from the field. The primary data were obtained from Purwokerto Islamic Hospital and the MUI fatwa drafts, while the secondary data were collected from books, journals, and other related scientific works.

The results show that the management of Purwokerto Islamic Hospital had referred to sharia provisions but had not fully implemented them. The various notes and analysis can be utilized as sufficient input and recommendations to see the extent of the implementation under the sharia principles and the implication of the DSN MUI fatwa implementation towards the Purwokerto Islamic Hospital operation. Attention to the factors influencing the effectiveness of the MUI fatwa implementation is an instrument that strongly supports the implementation itself. Purwokerto Islamic Hospital must meet the minimum standard of sharia provisions and other sharia hospital administration standards. A provision like hospital contracts with various parties is the essential thing to manage sharia hospitals. The contract between hospitals and other parties, including guardians, consumers or patients, suppliers of drugs or pharmaceutical equipment, suppliers of foodstuffs, company developers, banks, local government officials, insurance, training institutions, should consider the principles of sharia and DSN MUI fatwa.

**Key Words: Implications, Application, DSN-MUI Fatwa, Purwokerto Islamic Hospital**

**MOTTO**

**Mengerti dan Mengabdikan Sepenuh Hati**



## **Dedication**

By saying gratitude and hoping countenance of Allah SWT, and with full sincerity the writer dedicates this thesis to:

Both the author parents, Karsun Abdul Asyir and Wairah, who have always been motivation to become a better person and pray for the author endlessly, may

Allah bless both of them;

To the author grandmother, Mbah Munah, who has cared for the author and taught the meaning of independence so that the author is constantly becoming a better person;

To the brothers of the writer, Muhamad Adnin Nawawi S.Psi, Puji Rahayu S.Si, Muhamad Hafiatul Annur, Ratu Aulia Arba'i, who always give support;

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## PEDOMAN TRANSLITERASI ARAB-INDONESIA

Transliterasi kata-kata Arab yang dipakai dalam penyusunan skripsi ini berpedoman pada Surat Keputusan Bersama antara Menteri Agama dan Menteri Pendidikan dan Kebudayaan R.I. Nomor: 158/1987 dan Nomor: 0543b/U/1987.

### A. Konsonan Tunggal

Huruf Arab	Nama	Huruf Latin	Nama
ا	Alif	Tidak dilambangkan	Tidak dilambangkan
ب	Ba'	B	Be
ت	Ta'	T	Te
ث	Ṣa	ṣ	Es (dengan titik di atas)
ج	Jim	J	Je
ح	ḥ	ḥ	Ha (dengan titik di bawah)
خ	Kha'	Kh	Ka dan ha
د	Dal	D	De
ذ	Ḍal	ḍ	Ze (dengan titik di atas)
ر	Ra'	R	Er
ز	Zai	Z	Zet



س	Sin	S	Es
ش	Syin	Sy	Es dan ye
ص	Ṣad	ṣ	Es (dengan titik di bawah)
ض	Ḍad	ḍ	De (dengan titik di bawah)
ط	Ṭa'	ṭ	Te (dengan titik di bawah)
ظ	Ẓa'	ẓ	Zet (dengan titik di bawah)
ع	'ain	'	Koma terbalik di atas
غ	Gain	G	Ge
ف	Fa'	F	Ef
ق	Qaf	Q	Qi
ك	Kaf	K	Ka
ل	Lam	L	'el
م	Mim	M	'em
ن	Nun	N	'en
و	Waw	W	W

هـ	Ha'	H	Ha
ء	Hamzah	‘	Apostrof
ي	Ya'	Y	Ye

**B. Ta' Marbutah di akhir kata Bila dimatikan tulis *h***

الإجارة	Ditulis	<i>Ijārah</i>
مشاركة	Ditulis	<i>Musyarakah</i>

(Ketentuan ini tidak diperlakukan pada kata-kata arab yang sudah terserap kedalam bahasa Indonesia, seperti zakat, salat dan sebagainya, kecuali bila dikehendaki lafal aslinya)

**C. Vokal Pendek**

---َ---	Fatḥah	Ditulis	A
---ِ---	Kasrah	Ditulis	I
---ُ---	D'ammah	Ditulis	U

**D. Vokal Panjang**

1.	Fatḥah + alif	Ditulis	ā
	المال صاحب	Ditulis	<i>Ṣāḥibal-māl</i>
.2.	Kasrah + ya'mati	Ditulis	ī
	الزحيلي	Ditulis	<i>Al-Zuḥaylī</i>

**E. Vokal Rangkap**

1.	Fatḥah + ya' mati	Ditulis	Ay
	وهبه الزحيلي	Ditulis	<i>Wahbah al-Zuḥaylī</i>

**F. Kata Sandang Alif + Lam**

1. Bila diikuti huruf *Qomariyyah*

القراض	Ditulis	<i>Al-Qirāḍ</i>
--------	---------	-----------------



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## **LIST OF ABBREVIATION**

DSN-MUI	: Dewan Syariah Nasional Majelis Ulama Indonesia
DPS	: Dewan Pengawas Syariah
IAIN	: Institut Agama Islam Negeri Purwokerto
S.H.	: Sarjana Hukum
UU	: Undang - Undang
UUD	: Undang - Undang Dasar
SOP	: Standar Oprasional Prosedur
MUKISI	: Majelis Upaya Kesehatan Islam Seluruh Indonesia
EKG	: Electrocardiogram

The logo of IAIN Purwokerto is a large, stylized yellow triangle with a white outline, composed of three smaller triangles pointing upwards. Below the logo, the text "IAIN PURWOKERTO" is written in a bold, green, sans-serif font.

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The author is well aware that there are still many shortcomings in this thesis, and it is far from perfect. Thus, any criticism and suggestion is inspiration to become a rightful person. Hopefully, this thesis writing can be used as fruitful material by those who need it. Amen.

The Author



Muhamad Ikhwan A. A  
Nim. 1617301028



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**CURRICULUM VITAE**

# CHAPTER I

## INTRODUCTION

### A. Background of the Problem

The development of people's live nowadays tends to be more complex. This is indicated by the increasingly diverse and increasing public expectations to meet basic needs (public goods). In order to fulfill these basic needs, it is obviously necessary to provide service as a connecting hand of the government that can meet the basic needs of community. Implementation of public services is the government's obligation as the organization of the state that is responsible for providing good service to community in accordance with certain standard and the need, "present" society.<sup>1</sup>

The problems of health have become a basic need for the community. Everyone wants health because health is considered very valuable and expensive. Health is also an important part of community welfare. For this reason, one of the fundamental rights of the community is health service that must be carried out by the government as stated in Article 28h Paragraph 1 of the 1945 Constitution which reads: "Every person has the right to live in a prosperous physical and spiritual life, to live, and obtain a good and healthy living environment and has the right get health service".<sup>2</sup>

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<sup>1</sup> Fany Ifta'ul Wulan Sari, "Kualitas Pelayanan Rawat Inap Di Rumah Sakit Umum Daerah I Lagaligo Kabupaten Luwu Timur", *Skripsi* (Makasar: Universitas Hasanudin, 2016), hlm. 1.

<sup>2</sup> Fany Ifta'ul Wulan Sari, "Kualitas Pelayanan...", hlm. 3.

When the standard of living of the community increases, so does the community demand on health quality. This requires health service providers such as hospital to



improve the quality of better service, not only limited to curative healthcare but also including preventive treatment to improve quality of living and provide satisfaction for consumers as users of health service.<sup>3</sup>

Hospital as a health instrument has a very strategic role in the effort to accelerate the improvement of public health standard. The new healthcare paradigm requires hospital to provide quality service according to the patient's need and aspiration while still referring to the professional and medical code of ethics.

In general, hospital is a place that can treat patients suffering from various diseases and already owns several expert doctors. In the rapid development of technology and increasingly fierce competition, hospital is required to improve the quality of its services. Quality is the core survival of an institution. The quality revolution movement through an integrated quality management approach becomes a demand that should not be ignored if an institution wants to live and develop. The hospital is a place to health service that covers various health problems.

Indonesia is a country with the largest Muslim population in the world, which has population more than 200 million people. There are more than 2,500 hospitals spread throughout Indonesia. Among them are about 40 hospitals that proclaim themselves as Islamic hospital as the name of the institute but only 2 hospitals has

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<sup>3</sup> Rahadi Fitra Nova, "Pengaruh Kualitas Pelayanan Terhadap Kepuasan Pasien Rawat Inap Pada Rumah Sakit Pku Muhammadiyah Surakarta", *Skripsi* (Surakarta: Universitas Sebelas Maret Surakarta, 2010), hlm. 1.

already met the standard of sharia, as defined by MUKISI (Islamic Health Institution Network of Indonesia).<sup>4</sup>

According to economic historians, hospital service in Indonesia had begun since the beginning of the VOC's existence in the third decade of the XVII century. The hospital was based on religion and organization, including Islam.<sup>5</sup> Islam as a religion has concept or principle in organizing life cooperatively and universally, both in relationship with the God and fellow humans.<sup>6</sup>

Development of the issue of the concept of Sharia based Hospital has been started since at least 2010. Along with these issues, an assessment has emerged regarding the halal status of medical goods from Islamic perspective. Then the world is beginning to realize that the medical industry has developed into an industry with a swift circulation of money as well as significant economic potential.<sup>7</sup>

With that basis, The National Sharia Council of the Indonesian Islamic Scholar Council (DSN-MUI) in a composition that is both well established and mutually relevant to social condition. At the very least the fatwa, as an initial

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<sup>4</sup> Bayu Rahadian1, etc, Implementation of Halal Product Guarantee in Dental Health Services in Islamic Hospital, *International Journal of Human and Health Sciences*, Vol. 03 No. 02 April19, hlm. 54, <http://dx.doi.org/10.31344/ijhhs.v3i2.77>

<sup>5</sup> Laksono Trisnantoro, *Memahami Penggunaan Ilmu Ekonomi Dalam Manajemen Rumah Sakit* (Yogyakarta: UGM Press, 2004), hlm. 4-5.

<sup>6</sup> Ika Yunia Fauzia, dkk, *Prinsip Dasar Ekonomi Islam Presfektif Maqasid Al-Syariah* (Jakarta: Kencana, 2014), hlm. 256.

<sup>7</sup> Muhammad Mustaqim Zarif, et al. "The use of forbidden materials in medicinal products: An Islamic perspective", *Middle-East Journal of Scientific Research*, Vol. 13, 2013.

guideline, must be able to model the segmentation of the industry being presented towards sharia optimization, not just the origin of sharia or just a means of blurring.<sup>8</sup>

The National Sharia Council of the Indonesian Islamic Scholar Council (DSN-MUI) considers that the public needs an explanation of the guideline for the organization of sharia hospital principle. Whereas based on the consideration of DSN-MUI, it is deemed necessary to stipulate a fatwa for the organization of hospital based on sharia principles to become guideline. DSN Fatwa No: 107/DSN-MUI/X/2016 about guideline for the organization of sharia hospital, one of which is to determine the terms of the contract and the terms of service. The terms of the contract for various transactions according to this fatwa must be in accordance with sharia. The relationship between the hospital and medical staff, non-medical staff and patients, uses an *ijārah* agreement (rent services). Between hospitals and suppliers of medical devices or laboratory equipment, there are several contract options: *ijara*, *ijara muntahiyah bi al-tamlik* (lease purchase), *mudaraba* (capital and expertise cooperation), and *musharaka* (capital cooperation).<sup>9</sup>

Fatwa regarding Sharia Hospital regulates the terms of the contract, service, use, medicine, food, drink and used good, as well as placing and using hospital funds. Drugs and other products used must get halal certificate from the Indonesian Islamic Scholar Council. If the halal certificate has not been issued, the drug may be used as

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<sup>8</sup> Elimartati, "Analisis Metode Hilah dalam Proses Fatwa DSN-MUI", *Juris (Jurnal Ilmiah Syariah)* 15, No. 1. 2017, hlm. 75. <https://www.researchgate.net>.

<sup>9</sup> Nanik Puspitasari, "Implementasi Fatwa No. 107/DSN-MUI/X/2016 Tentang Pedoman Penyelenggaraan Rumah Sakit Berdasarkan Prinsip Syariah", *Skripsi* (Lampung: UIN Raden Intan Lampung 2018), hlm. 5-6.



long as it does not contain illicit substances and must possess approval from the Sharia Supervisory Board (DPS).

The Islamic Hospital is a Hospital that all of its activities are based on *Maqāsid As Syarīah*, which aims to protect religion, life, mind, offspring and property. *Maqāsid As Syarīah* is a corridor for guideline that everything we do must not collide with sharia principles. These principles serve as guideline in the management functions in hospitals, including: marketing, management of human resources, management of infrastructure and financial management of Islamic Hospital.<sup>10</sup> In DSN-MUI fatwa No: 107/DSN-MUI/X/2016 regarding general provision in paragraph three it is stated that hospital must prioritize humanitarian aspect in providing health service that is appropriate to the need of patients, regardless of race, ethnicity, and religion.<sup>11</sup>

As Hospital that bears Islam in the name of its institution, it should be appropriate if every activity carried out in Purwokerto Islamic Hospital should always be based on Islamic principles (Sharia). As opposed to the most conventional health institutions which are mainly oriented in generating profit through its health service, sharia hospital is also emphasizing the implementation of islamic teaching and its value in its service element..

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<sup>10</sup> Annisa Sholiha, “Tinjauan Fatwa DSN No.107/DSN-MUI/X/2016 Terhadap Penyelenggaraan Rumah Sakit Islam Sakinah di Mojokerto ”, *Skripsi* (Surabaya: UIN Sunan Ampel, 2018), hlm. 2.

<sup>11</sup> Anonim, *Fatwa DSN-MUI No:107/DSN-MUI/X/2016 Tentang Pelayanan Rumah Sakit Syariah*, Ketentuan Umum Point Ketiga.

Purwokerto Islamic Hospital a health institution located in Banyumas Regency. Here, the reality shows that even situated in an Islamic environment, its community is not automatically aspired to run a hospital based on sharia principle. For example, in Purwokerto Islamic Hospital, in reality, people who receive service from Islamic Hospital here mostly do not understand the guideline for hospital management in accordance with sharia. On the other hand, the Purwokerto Islamic Hospital did not fully make the DSN-MUI fatwa about the guideline for the organization of this hospital to be a fully carried out as the reference, the hospital only presented maximum efforts and in accordance with professional ethics carried out through the best form of service to patient. Furthermore, the Purwokerto Islamic Hospital also said that for the provision of patient and family facilities of patients involved in the hospital, Purwokerto Islamic Hospital always prioritizes satisfaction and good service to all parties involved, this factor is also used as a benchmark in the management services in Purwokerto Islamic Hospital.<sup>12</sup>

Based on this background, in this Thesis examines the implications of the applications of the DSN-MUI Fatwa concerning Sharia Hospital Guidelines, the substance of the fatwa, and critical analysis of patient management and services at Purwokerto Islamic Hospital. So, I give the title of this thesis with “Implications of the Application of DSN-MUI Fatwa No. 107/DSN-MUI/X/2016 Concerning the Guidelines of Sharia Hospitals to the Purwokerto Islamic Hospital”.

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<sup>12</sup> Wawancara Pra Penelitian dengan Sdr. Yusuf, Bagian Humas dan Sumber Daya Insani di Rumah Sakit Islam Purwokerto pada Rabu 19 Februari 2020, pukul 14.15 WIB.

## B. Operating Definitions

### 1. DSN-MUI Fatwa No. 107/DSN-MUI/X/2016

Fatwa is the opinion of scholars or muftis in response to questions that are developing in society. Along with the development of the times, the fatwas issued by the MUI will also increasingly develop. At present there are two fatwa fields that have a wide-ranging impact on society, namely halal food products and sharia economics.<sup>13</sup> DSN-MUI fatwa is a fatwa issued by the National Sharia Council-Indonesian Islamic Scholar Council on various types of contract, provision, product, and operation of Sharia Financial Institution.<sup>14</sup>

DSN-MUI Fatwa No. 107/DSN-MUI/X/2016 is a DSN-MUI Fatwa which discusses guideline for administering Islamic Hospital. This fatwa was born on the basis of the need for the existence of a reference in the organization of hospital in accordance with Islamic law. This is also the step of DSN-MUI in maintaining and guaranteeing the implementation of Islamic Hospital in accordance with sharia principles. This hopefully will make every service available in hospital especially Islamic-based hospital can be encouraged and structured in the implementation of Islamic Hospitals in accordance with the DSN-MUI Fatwa.<sup>15</sup>

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<sup>13</sup> Salma Barlinti, *Kedudukan Fatwa Dewan Syariah Nasional dalam Sistem Hukum Nasional di Indonesia* (Jakarta: Badan Litbang dan Diklat Kementerian Agama RI, 2010), hlm. 63-64.

<sup>14</sup> Ahmad Ifhan Sholihin, *Buku Pintar Ekonomi Syari'ah* (Jakarta: Gramedia Pustaka Utama, 2010), hlm. 529.

<sup>15</sup> Anonim, *Fatwa DSN-MUI No. 107/DSN-MUI/X/2016 Tentang Pedoman Penyelenggaraan Rumah Sakit Syariah*.

## 2. Purwokerto Islamic Hospital

Hospital is a professional health care institution whose services are provided by doctors, nurses and other health professionals. Islamic Hospital Purwokerto is located at Jl. H. Masyuri Rejasari No 39 Purwokerto Banyumas, Central Java, Indonesia, 53134.

Purwokerto Islamic Hospital or commonly known as “RSI” is a hospital that has been established since the 1980s and is the only hospital with an Islamic label in its name. This makes the Islamic Hospital perspective, the only health institution that always puts the value of Islam in the service.

### **C. Research Questions**

Based on the background above, I formulate problems that limit of this study is how the fatwa and MUI about the Sharia Hospital Guidelines and How the Implications of the application of the DSN-MUI fatwa to the management and services of patients in Islamic Hospital Purwokerto. So to facilitate the understanding, I formulate the problems with the following question forms:

1. How is the Implementation of Sharia Principle at Purwokerto Islamic Hospital ?
2. How is the Implications of the Application DSN-MUI fatwa no. 107/DSN-MUI/X/2016 concerning the Guidelines of Sharia Hospital to the Purwokerto Islamic Hospital ?

#### **D. Purposes of Research**

With the background of the problem that the author presented at the beginning, the focus of this research is about the extent of the influence of the application of the DSN-MUI Fatwa on the quality of the health service implementation on Purwokerto Islamic Hospital. Thus the objectives to be achieved by me are as follows:

1. To find out the application of the Sharia Principle and DSN-MUI fatwa No. 107/DSN-MUI /X/2016 about Guidelines for the Sharia Hospital at Purwokerto Islamic Hospital.
2. To find out the extent of the Implications of the Application of the DSN-MUI fatwa about Guidelines of Sharia Hospital in Purwokerto Islamic Hospital.

#### **E. Benefits of Research**

I hopes this research can provide benefits to various parties. The benefits of this study that the author expects include the following:

1. For me and readers the benefits of the research that the author is doing is to deepen and broaden understanding of the DSN-MUI fatwa No. 107/DSN-MUI/X/2016 Concerning a Guidelines of Sharia Hospital.
2. This study also can be used as an evaluation material for how effective the actual application of the DSN-MUI fatwa no. 107/DSN-MUI/X/2016 at the Purwokerto Islamic Hospital.

3. Theoretically, the author hopefully can add library material that can be used for further research related to DSN-MUI fatwa No. 107/DSN-MUI/X/2016 concerning guidelines for the administration of Sharia Hospital in this study
4. In addition, this study also provides an overview of the Implications of the adoption of the DSN-MUI fatwa no. 107/DSN-MUI/X/2016 to the Management Services Purwokerto Islamic Hospital.

#### **F. Literature Review**

Literature review is intended to put forward theories that are relevant to the research problem. From this point of view, the literature review conducted is the basis for developing this paper. As far as the I know, if we look at it from previous work, there has not been any work that discusses directly about the DSN-MUI fatwa No. 107/DSN-MUI/X/2016 within Purwokerto Islamic Hospital. However, there are several works that are similar to this paper.

Thesis by Fany Ifta'ul Wulan Sari from Mataram University, entitled “Kualitas Pelayanan Rawat Inap di Rumah Sakit Umum Daerah I Lagaligo Kabupaten Luwu Timur”. The equation is about the object of study which is the Hospital Institution. In this study, Fany also discussed services at the hospital where she did the research. The difference between the author and Fany’s work is the focus of the study and the background of science used in his research.<sup>16</sup>

Rahadi Fitra Nova's Thesis, “Pengaruh Kualitas Pelayanan Terhadap Kepuasan Pasien Rawat Inap Pada Rumah Sakit PKU Muhammadiyah Surakarta”

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<sup>16</sup> Fany Ifta'ul Wulan Sari, “*Kualitas pelayanan pasien...*,”

also discusses hospital services, but the difference is the thesis of Rahadi's work focuses on the level of patient satisfaction and does not involve it with the DSN-MUI fatwa on guidelines for the operation of Sharia Hospitals.<sup>17</sup>

Thesis of Nanik Puspitasari entitled “Implementasi Fatwa No. 107/DSN-MUI/X/2016 Tentang Pedoman Penyelenggaraan Rumah Sakit Berdasarkan Prinsip Syariah (Studi Pada Rumah Sakit Islam At-Taqwa Gumawang Kecamatan Belitung Kabupaten Oku Timur Sumatera Selatan)”. This thesis focuses on the service and management of the At-Taqwa Hospital that is not in accordance with the provision of the fatwa DSN MUI No. 107/DSN-MUI/X/2016 concerning guidelines of Sharia Hospital. The similarity with the author’s research is in the discussion of the implementation the MUI fatwa No.107 / DSN-MUI / X / 2016.<sup>18</sup> The difference is in the research location and study space involved in the writing of the thesis, where the author also discusses the implications of the application of the DSN-MUI Fatwa in Purwokerto Islamic Hospital.

Thesis written by Annisa Sholiha, “Tinjauan Fatwa DSN No.107/DSN-MUI/X/2016 Terhadap Penyelenggaraan Rumah Sakit Islam Sakinah di Mojokerto”. This thesis focuses on the study of the DSN-MUI fatwa,<sup>19</sup> but what distinguishes this study from what the author studies is in terms of its problem limitation, where the

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<sup>17</sup> Rahadi Fitra Nova, “Pengaruh Kualitas...,”

<sup>18</sup> Nanik Puspitasari, “Implementasi Fatwa...,”

<sup>19</sup> Annisa Sholiha, “Tinjauan Fatwa DSN No.107/DSN-MUI/X/2016 Terhadap Penyelenggaraan Rumah Sakit Islam Sakinah Di Mojokerto”, *Skripsi* (Surabaya: UIN Sunan Ampel, 2018), hlm. 2.

research that the author is doing also concerns the Implications of the DSN-MUI Fatwa Management and Patient Services. Besides that, in the thesis object Anisa Sholiha is also located in the Mojokerto Islamic Hospital.

Journal by Muadi Faizin, “Analisis Fatwa DSN-MUI Tentang Pedoman Penyelenggaraan Rumah Sakit Syariah”, *Jurnal Nizham*, Vol. 06, No. 02 Juli-Desember (Lampung : IAIN Metro). This journal explains the DSN-MUI fatwa on guideline for the administration of sharia hospital.<sup>20</sup> The same is the same study on the DSN-MUI fatwa, the difference is that this study still only addresses the fatwa in general.

Journal of Islamic Economics by Sumadi Vol. 03 No. 02, 2017 with the title “Peran Manajemen Syariah Terhadap Peningkatan Kepuasan Pelanggan Pada Rumah Sakit Islam Di Kota Surakarta”, *Jurnal Ilmiah Ekonomi Islam*, Vol. 03 No. 02, 2017.<sup>21</sup> There are similarities in discussion regarding Hospitals, but the difference is in the emphasis of the Sharia Management.

The journal written by Mia Putriyana et al with the title “Analisis Standar Sertifikasi Rumah Sakit Syariah Menurut Mukisi Tentang Kehalalan Dan Higienitas Makanan Terhadap Pelayanan Di Rumah Sakit Al Islam Kota Bandung”, Bandung

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<sup>20</sup> Muadi Faizin, “Analisis Fatwa DSN-MUI Tentang Pedoman Penyelenggaraan Rumah Sakit Syariah”, *Jurnal Nizham*, Vol. 06, No. 02, Juli-Desember 2018 (Lampung: IAIN Metro) <https://www.researchgate.net>.

<sup>21</sup> Sumadi, “Peran Manajemen Syariah terhadap Peningkatan Kepuasan Pelanggan pada Rumah Sakit Islam di Kota Surakarta”, *Jurnal Ilmiah Ekonomi Islam*, Vol. 03 No. 02, 2017, <Http://Jurnal.stie.aas.ac.id>.



Islamic University.<sup>22</sup> The same is in the discussion of Sharia Hospital Services, but the difference of this thesis also focuses on discussing halalities and food hygiene.

## G. Theoretical Framework

### 1. Effectiveness of Law

In this study, the theory used by the author is the effectiveness of law. According to Achmad Ali, in this effectiveness of law theory, the extent to which law will be effective can be assessed from the extent to which a rule of law is adhered to, further factors that can influence a rule of law also are professionalism and optimization of the role and function of law enforcement authorities both in explaining the tasks assigned against them as well as in upholding the rule of law.<sup>23</sup>

The theory of effectiveness of the law According to Soejono Soekamto is whether or not an effective rule of law is influenced by factors, is:

- a. The legal of the law factor it self
- b. The law enforcement factor is that forms or applies the rule of law
- c. Factors supporting facilities or facilities in law enforcement efforts
- d. Community factors around the applicable law or applied

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<sup>22</sup> Mia Putriyana dkk, “Analisis Standar Sertifikasi Rumah Sakit Syariah menurut Mukisi Tentang Kehalalan dan Higienitas Makanan terhadap Pelayanan di Rumah Sakit Al Islam Kota Bandung”, *Prosiding Hukum Ekonomi Syariah*, Universitas Islam Bandung. Volume 4, No. 2, 2018. <http://karyailmiah.unisba.ac.id>.

<sup>23</sup> Achmad Ali, *Menguak Teori Hukum dan Teori Peradilan* (Jakarta: kencana, 2010), hlm. 375.

- e. Cultural factors, namely the results of creative works and tastes created from human initiative in the association of life.<sup>24</sup>

## 2. Sharia Hospital

The Hospital is a professional health care institution whose services are provided by doctors, nurses and other experts. In the Hospital there are many activities and activities that take place in a related manner.<sup>25</sup>

The Hospital as an organ that was originally established based on social, humanitarian or religious goal has in its history experienced growth, so that the hospital functions to bring together 2 (two) principal tasks that differentiate it from other organs that produce services. The Hospital is an organ that brings together tasks that are based on the argument of medical ethics because it is a place of work for professionals who recite medical oaths bound by Hippocratic postulate in carrying out their duties. Besides that, in terms of law as the basis for the organization of the Hospital as an organ that engages in legal relations in society bound by legal norms and ethical norms of society, the two norms are different, both in their formation and in the implementation of the consequences if violated.<sup>26</sup>

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<sup>24</sup> Seorjono Soekamto, *Faktor - Faktor Yang Mempengaruhi Pengakan Hukum* (Jakarta: PT Raja Grafindo Persada, 2008), hlm.8.

<sup>25</sup> Arif Haliman & Ari Wulandari, *Cerdas Memilih Rumah Sakit Sebuah Komunikasi Medical Yang Jujur dan Harmonis* (Yogyakarta: Rapha Publishing, 2012), hlm. 12.

<sup>26</sup> Hermein Hadiati Koeswadji, *Hukum Untuk Perumahsakitan* (Bandung: Citra Aditya Bakti, 2002), hlm. 188-189.

According to Indonesian dictionary, what is meant by a hospital is a home where people take care for the sick and provide health services covering a variety of health problems.<sup>27</sup>

Whereas Sharia Hospital is a Hospital which in management is based on the principle of *Maqāsid As Syarīah*. *Maqāsid As Syarīah* is a corridor for guideline that everything we do must not collide with sharia principles. These principles serve as a guideline in the functional management in hospital, including: marketing, management of human resources, management of infrastructure and financial management of Islamic hospital.<sup>28</sup>

Islamic Hospital or Sharia is actually located between two complementary points: the ideal point of missionary mission on one side, and on the other side of the commercial point that can provide guarantees for the survival of the Hospital. Islamic Hospitals must not disband just because of loss. In addition, the presence of an Islamic Hospital also carries a historical mission.

### 3. Contracts in Sharia Hospital

According to the language of *Aqad* has several meanings, including: First, binding (*ar-rabt*), or collecting in two ends of a rope and binding one of them with

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<sup>27</sup> Anonim, *Kamus Besar Bahasa Indonesia edisi kedua* (Jakarta: Balai Pustaka, 1995), hlm. 851.

<sup>28</sup> Annisa Sholiha, "Tinjauan Fatwa DSN...",

another way so that it is connected, then both become part of a piece of object. Then, the connection (*aqdatun*) or connection that holds both ends and ties them.<sup>29</sup>

1. *Ijārah*. *Ijārah* literally means "reward" or "compensation".<sup>30</sup> Therefore *lafaz ijārah* has a general meaning which includes wages for the use of an object or reward for an activity, or wages for doing something. According to language (etymology), wages mean rewards or substitutes whereas according to the term (terminology), wages are taking the benefits of other people's labor by giving compensation or compensation according to certain condition. Thus what is meant by wages is to give a reward as payment to someone who has been ordered to do a certain work and the payment is given according to an agreed agreement.
2. *Murābahah*. *Murābahah* in language comes from the word *ribh* which means to grow and develop in commerce. In sharia terms, the concept of *murābahah* there are various formulations of different definitions in the opinion of the Council.<sup>31</sup> According to the Ustmani, *murābahah* is a form of buying and selling which requires the seller to provide information to the buyer about the costs incurred to obtain the commodity (the cost of purchase) and the desired additional profit which is reflected in the selling price. According to Al-Kasani

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<sup>29</sup> Ismail Nawawi, *Fikih Muamalah Klasik dan Kontemporer* (Bogor: Ghalia Indonesia, 2012), hlm. 19.

<sup>30</sup> Imam Mustofa, *Fikih Muamalah Kontemporer* (Jakarta: PT Raja Grafindo Persada, 2016), hlm. 101.

<sup>31</sup> Ismail Nawawi, *Fikih Muamalah Klasik...*, hlm. 91.

*murābahah* reflects the sale and purchase transaction: the selling price is the accumulation of costs that have been incurred to bring the object of the transaction or the cost of purchase with additional benefits specified by the seller (margin); the purchase price and the amount of profit desired by the buyer.<sup>32</sup>

3. *Ijārah Muntahiyah bi al-Tamlik*. In language, *al-Ijārah al-Muntahiyah bi al-Tamlik* means to break up two in it. The first is the word *al-Ijārah* which means wages, which is a form of wages given to work.<sup>33</sup> And the second word is *al-Tamlik*, language has a meaning that can make someone else to have something. Meanwhile, according to the term, *al-Tamlik* can be in the form of ownership of objects, ownership of benefits, can be in return or not. So *al-Ijārah Muntahiyah bi al-Tamlik* is an agreement to utilize (rent) goods between the owner and the consumer and at the end of the rental period, the consumer will have the goods to be rented.
4. *Musyārahah Mutanaqīshah*. *Musyārahah Mutanaqīshah* comes from a *Musyārahah* agreement or a joint venture between two parties, from the Arabic word *syirkah* which means cooperation or partnership, and *mutanaqīshah* it self comes from the Arabic word *yutanaqīsh* which means to reduce gradually.<sup>34</sup> In language (*lugatān*), cooperation (*al-syirkāh*) is a mixture of one thing with another so it is difficult to distinguish. As for the

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<sup>32</sup> Ismail Nawawi, *Fikih Muamalah Klasik...*,

<sup>33</sup> Imam Mustofa, *Fikih Muamalah...*, hlm. 122.

<sup>34</sup> Ismail Nawawi, *Fikih Muamalah Klasik...*, hlm. 151.

terms of cooperation (*syirkah*) is the participation of two or more people in a particular business with a number of models determined based on the agreement to jointly run a business and the distribution of profits or losses in the specified part.

5. *Muḍārabah*. *Muḍārabah* is derived from the word “*ḍarob*” which signifies work carried out by two or more parties. *Muḍārabah* is one of the contracts carried out by two parties, the capital owner ( *ṣahībul māl* ) and the businessman who runs the capital (*muḍārib*). In *Muḍārabah* terminology, it means the amount of money one person gives to another person for venture capital, if it gets a profit then it is divided in half, namely for capital owners and business actors or who run capital in percentage or amount according to the agreement.
6. *Wakalah bil Ujrah*. *Wakalah* contract *bil ujrah* is one type of contract (agreement) that is used in sharia insurance. *Wakalah* means protection (*al-hifzh*), adequacy (*al-kifayah*), dependents (*al-ḍamah*) or delegation (*al-tafwidh*), which also means giving power or affairs to him. *Wakalah* contract *bil ujrah* for insurance is a form of contract where participants give power of attorney to insurance companies in the management of their funds by giving *ujrah* (fees). The principle adopted in sharia insurance is the risk sharing principle. Risk is not transferred from the customer/participant to the insurance company (risk transfer), but is shared or beaten together among the customers/participants.<sup>35</sup>

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<sup>35</sup> Nanik Puspitasari, *Implementasi Fatwa ...*,

## H. Sequence of Discussion

To provide an overview of the preparation of this thesis, i will share the process of preparing this thesis with systematic discussion. The systematic discussion of this will describe the process of preparing this proposal from Chapter I to Chapter V.

Chapter I is Background of the Problem. In this chapter I discussed about the background, operational definitions, research questions, research objectives, research benefits, literature review, theoretical framework, and systematic discussion.

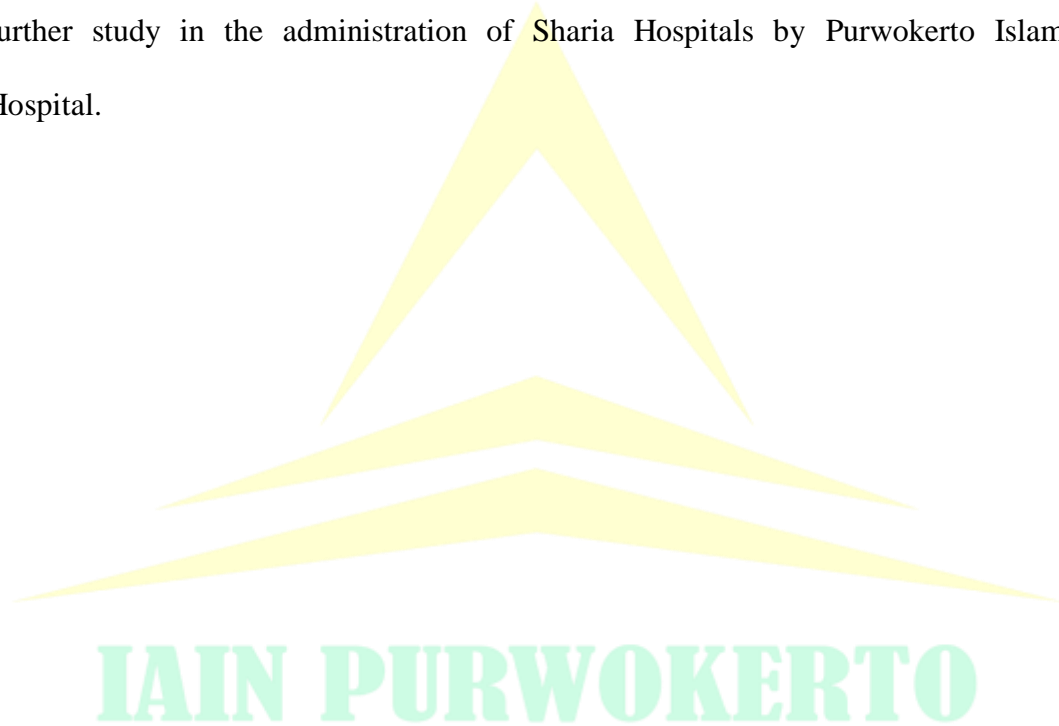
Chapter II is the theoretical foundation. In chapter II, what is discussed is the basic theory used in the preparation of this thesis. The theoretical basis to be discussed is Effectiveness of law, the definition of Sharia Hospitals, Sharia Hospital Legal Basis and Sharia Hospital Operational Guidelines in accordance with DSN-MUI Fatwa No. 107/X/DSN-MUI/2016. This chapter will also discuss the types of contract in Implementation of Sharia Hospital.

Chapter III contains research methods, including: Types of research, determining the location of research, determining data sources, research approaches, subjects and research objects, and data collection methods.

Chapter IV is a field research report. In chapter III what will be discussed is the background of the Purwokerto Islamic Hospital, starting with a discussion of the history of the Purwokerto Islamic Hospital, the management structure of Purwokerto Islamic Hospital, the vision and mission of Purwokerto Islamic Hospital, Purwokerto

Islamic Hospital services. In this chapter, it will also discuss the implications of implementing the guidelines for the administration of Sharia Hospitals in accordance with DSN-MUI Fatwa No. 107/X/DSN-MUI/2016 for the patient management and services Purwokerto Islamic Hospital.

Chapter V will contain conclusion that contain answers to the questions raised in the formulation of the problem and suggestions intended as recommendations for further study in the administration of Sharia Hospitals by Purwokerto Islamic Hospital.





## CHAPTER II

### THEORETICAL BASIS

#### A. Legal Effectiveness

In this study, the theory used by me is the effectiveness of law. The theory of legal effectiveness used in this study is intended to measure the extent to which an indication of the effectiveness of the application of a rule of law in a particular place. In this study, the legal rules that were examined were the rules regarding the hospital, especially the implementation of the fatwa established by the MUI National Sharia Council (DSN-MUI) regarding the guidelines for Islamic hospitals in the Purwokerto Islamic Hospital. Every existing factor that underlies the effectiveness of the law will be observed on the field as well as the extent to which it can influence the application of fatwas and MUI regarding sharia hospitals.

Effectiveness is a term that derives from the word "effective" which means successfully obeyed, validated, efficacious and lucky. From the series of meanings above, the most appropriate one to be applied to this study is "to be obeyed". Effectiveness, according to Amin Tunggal Widjaya, is the result of making decisions that lead to doing something right, which helps fulfill the mission of a company or achieve goals.<sup>36</sup> Meanwhile, according to Permata Wesha, effectiveness is the state or ability of the success of a work done by humans to provide the expected use. To be

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<sup>36</sup> Widjaya, Amin Tunggal, *Manajemen Suatu Pengantar*, cetakan pertama (Jakarta: Rineka Cipta Jaya, 1993), hlm. 32.

able to see the effectiveness of work in general, four types of considerations are used, namely economic, physiological, psychological and social considerations. Effectiveness is also said to be a condition that shows the success of the work that has been determined. Sarwoto terms effectiveness with "effective use", that is, a service that is of good quality and style which meets the needs in achieving the goals of an organization.<sup>37</sup> According to Achmad Ali, in this theory, the extent to which the law will be effective can be assessed from the extent to which a legal rule is obeyed, whereas the factor that can significantly influence a rule of law is the professionalism and optimization of the roles, functions and authorities of law enforcers, both in performing the tasks assigned to them and in enforcing the law.<sup>38</sup> According to Soejono Soekamto, the effectiveness of a rule of law is influenced by a number of factors, namely:

1. The legal factor itself;
2. Law enforcement, meaning the parties who form or apply legal rules;
3. The means or facilities that support law enforcement efforts;
4. The communal factor, meaning the community in which the law applies or is applied, and;

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<sup>37</sup> Sarwoto, *Dasar-Dasar Organisasi dan Manajemen* (Jakarta, Ghala Indonesia, 1990), hlm. 126.

<sup>38</sup> Achmad Ali, *Menguak Teori Hukum dan Teori Peradilan*, Vol. 1 (Jakarta: Kencana, 2010), hlm. 375.

5. The cultural factor, meaning the abstract values created through human social interactions.<sup>39</sup>

According to Soerjono Soekanto, the measure of effectiveness in the first element is:

1. The existing regulations regarding certain areas of life are adequately systematic;
2. The existing regulations regarding certain spheres of life are adequately synchronous, where hierarchical and horizontal conflicts are absent;
3. Qualitatively and quantitatively, the regulations governing certain aspects of life are sufficient, and;
4. The issuance of certain regulations is in accordance with existing juridical requirements.<sup>40</sup>

The second element that determines the effectiveness of the performance of written law is the law enforcement officers. In this sense, a reliable apparatus is required, meaning that officers should carry out their duties properly. Reliability, in this sense, includes professional skills and exceptional mental ability. According to Soerjono Soekanto, problems that affect the effectiveness of written law in terms of the apparatus depend on the following:

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<sup>39</sup> Soejono Soekanto, *Faktor Faktor yang Mempengaruhi Penegakan Hukum* (Jakarta: PT Raja Grafindo Persada, 2008), hlm. 8.

<sup>40</sup> Soerjono Soekanto, *Faktor...*,

1. The extent to which officers are bound by existing regulations;
2. To what extent are officers allowed to provide discretion;
3. The kind of role model the officer should give to the community;
4. The degree of synchronization of the assignments given to officers so as to provide strict limits on their authority.

The third element is the availability of facilities and infrastructure for the implementing apparatus to carry out their duties. The facilities and infrastructure in question are those used as tools to achieve legal effectiveness. With regard to the facilities and infrastructure referred to as this facility, Soerjono Soekanto predicts the benchmark for the effectiveness of certain elements of infrastructure, where the infrastructure must clearly be a part that contributes to the smoothness of the apparatus' tasks at their work location.

There are several elements that measure the effectiveness depending on the conditions of society, namely:

1. The factor that cause people not to comply with the rules even if the rules are adequate;
2. The factor that cause the community to not comply with the regulations even though the regulations are adequate and the officials are very authoritative;
3. The factor that cause the community to not comply with the adequate regulations, the authoritative officers and the adequate facilities

The theory of legal effectiveness put forward by Soerjono Soekanto is very relevant to the theory put forward by Romli Atmasasmita, namely that the factors that hinder the effectiveness of law enforcement do not only lie in the mental attitude of law enforcement officials (judges, prosecutors, police and legal advisors) but also lie in the factors of legal socialization that are often overlooked. The measure of whether or not the prevailing laws and regulations are effective can be observed from people's behavior. A law or statutory regulation will be effective if community members behave in accordance with what is expected or desired by these laws and regulations. If the laws and regulations achieve the desired goal, then the effectiveness of the law or statutory regulation has been achieved.

## **B. Sharia Hospital**

### 1. Definition of Sharia Hospital

Health is a human right and one of the elements of welfare that must be realized in accordance with the ideals of the Indonesian people as referred to in Pancasila and the Preamble to the 1945 Constitution of the Republic of Indonesia.<sup>41</sup> Therefore, every activity and effort to improve the highest degree of public health is carried out based on non-discriminatory, participatory, protective and sustainable principles which are very important for the formation of Indonesia's human resources and the enhancement of the nation's resilience and

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<sup>41</sup> Anonim, *Pasal 28 H ayat (1) Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*.

competitiveness, and development.<sup>42</sup> Efforts to improve the highest degree of health at first are in the form of efforts to cure diseases, then gradually develop towards integrated health efforts for the entire community by involving the community at large, including promotive, preventive, curative and rehabilitative efforts that are comprehensive, integrated and continuous.<sup>43</sup>

Definition of a hospital in the 2009 Law of the Republic of Indonesia No. 44 on Hospitals, a hospital is a healthcare institution that organizes personal health services plenary that provides inpatient, outpatient, and emergency services.<sup>44</sup> In addition, a hospital is a place to provide health services covering various health problems. In general, a hospital is an institution that treats patients suffering from various diseases and has several specialist doctors.<sup>45</sup> In another sense, a hospital is a comprehensive part (integration) of an organization and a medical institution, which functions to provide complete health services to the community, both curative and preventive, where the output of its services reaches familial and communal services. A hospital is also a training center for health workers and biosocial research.<sup>46</sup>

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<sup>42</sup> Anonim, *Undang-Undang No. 36 Tahun 2009 Tentang Kesehatan...*,

<sup>43</sup> Noor M Aziz, dkk, *Laporan Penelitian Hukum Tentang Hubungan Tenaga Medik, Rumah Sakit dan Pasien* (Jakarta: BPHN Kemenkumham, 2010), hlm. 4

<sup>44</sup> Anonim, *Undang-Undang Republik Indonesia No. 44 tahun 2009 Tentang Rumah Sakit, pasal 1.*

<sup>45</sup> Anton M. Moeliono, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 1990), hlm. 758.

<sup>46</sup> Rosihan Adhani, *Mengelola Rumah Sakit* (Banjarmasin: Universitas Lambung Mangkurat Press, 2016), hlm. 16.

Hospital as one of the health service facilities is part of health resources which are indispensable in supporting the implementation of health efforts. The delivery of health services in hospitals has very complex characteristics and organizations. Different types of health workers with their respective scientific devices interact with each other. Simply put, hospital is a place mainly to heal diseases and for health recovery. The government has the responsibility to provide health services in order to improve community welfare. Hospitals are required to fulfill several types of services in accordance with the minimum service standards stipulated in the 2008 Decree of the Minister of Health of the Republic of Indonesia No. 129. From time to time, hospitals have developed which are now becoming socio-economic units. As of recently, there have been many discussions about sharia hospitals, namely hospitals whose management is fundamental to *Maqāshid As Syarīah*.<sup>47</sup>

Sharia Hospital is a hospital whose management is based on values pertaining to *Maqāshid As Syarīah*, including safeguarding religion, soul, descent, reason and assets. *Maqāshid* is a form of *maqṣud*, as for the verbal word, it is called *qashada* which means aiming, willing, and deliberate. The word *maqṣud-maqāshid* in Arabic grammar is called *isim maf'ul*, which is something that becomes an

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<sup>47</sup> MUKISI, *Pedoman SPM RS Syariah & Indikator Mutu Wajib Syariah* (Jakarta: MUKISI, 2017), hlm. 2.

object, but it can also be interpreted as "purpose" or "several goals".<sup>48</sup> In other words, sharia hospitals can be defined as health service institutions that carry out individual health services in a complete manner while being managed based on sharia principles. A sharia hospital provides services for health and spiritual needs. The standards upheld in sharia hospitals are aligned with sharia rules. Sharia hospitals are hospitals whose activities are based on *Maqāṣid As Syarīah al-Islamiyah* (The purpose of implementing Islamic sharia). *Maqāṣid al-Syariah al-Islāmiyah* according to Imam Syatibi:<sup>49</sup> Maintaining Religion (*hifẓ al-dīn*), Maintaining the Soul (*hifẓ al-nafs*), Maintaining Descendants (*hifẓ al-naṣl*), Maintaining Intellect (*hifẓ al-‘aql*), Maintaining property (*hifẓ al-māl*).

The development of today's hospitals can be traced back to the development of medical history initiated by a Muslim thinker, Ibn Sina, whose contributions should not be forgotten from history. Ibn Sina was a figure who discovered medical science. According to historical records, some of his thoughts were inspired by the healing traditions that the Prophet and his companions had

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<sup>48</sup> Muhammad Mufid, *Ushul Fiqh Ekonomi dan Keuangan Kontemporer dari Teori ke Aplikasi* (Jakarta: Prenadamedia Group, 2016), hlm. 165-166.

<sup>49</sup> Masyhudi, "Integrasi Rumah Sakit Syariah dalam Sistem Kesehatan Nasional", *Makalah pada 2nd Internasional Islamic Healthcare Conference and Expo (IHEX)* (Jakarta: 23 Pebruari 2019), hlm. 14.



developed. It is not surprising that nowadays people begin to reopen their eyes to the objectivity of healing methods according to the prophetic tradition.<sup>50</sup>

Hospital services are generally grouped as :<sup>51</sup>

- a. Medic services including outpatient care, emergency care units, specialist medic and outpatient sub-specialists, intensive care units as well as intensive cardiac care unit (ICCU);
- b. Nursing services. Usually this service is in collaboration with medical services;
- c. Medical support services, such as radiology, laboratory, anatomical pathology, pharmacy, nutrition, medical records, instrument sterilization, and blood services;
- d. Non-medical support services, such as linen/laundry, maintenance of hospital facilities and infrastructure, morgue, transportation, firefighting, clean water storage, and prevention of nosocomial infections;
- e. Administrative services, such as information and patient admissions, finance, personnel, security, hospital information systems, and hospital marketing;
- f. Environmental and hospital waste management.

Sharia Hospitals focus on adding value to the services provided to patients by meeting the needs pertaining to faith, worship and *muamalah*. In addition, sharia hospitals are part of the synergy and collaboration with the government in

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<sup>50</sup> Alek Abdan Syakuro, “Pengaruh Peningkatan Pelayanan Dengan Prinsip-Prinsip Syari'ah Pada Rumah Sakit Islam Terhadap Kepuasan Pelanggan Pada RSI Sultan Agung Semarang”, *Skripsi* (Semarang: IAIN Walisongo, 2010), hlm. 9.

<sup>51</sup> *Rosihan Adhani...*, hlm. 80.

improving the health of Indonesian people, including physical health, mental health and spiritual health.<sup>52</sup> Islamic Hospitals operate by adopting sharia standards that have been certified by the DSN-MUI. Sharia Hospital certification is necessary to protect and maintain the essence, reason, property and honor of Islamic values as well as to provide opportunities for Islamic hospitals as a distinguished service, placing humans in a very high position as servants of Allah as well as a way to enforce Islamic law.<sup>53</sup>

Sharia Hospitals are actually located between two points that complement each other: the ideal point that carries out a missionary mission on the one hand, and on the other hand, a commercial point that can guarantee the survival of the hospital. Islamic hospitals should not be disbanded for reasons of loss. In addition, the presence of Islamic hospitals also carries out a historical mission.<sup>54</sup>

Sharia Hospitals are required to meet the quality indicators and sharia minimum service standards stipulated in the Sharia Minimum Guidelines and Sharia Compulsory Quality Indicators. Sharia mandatory quality indicators include; patients with *talqin*, reminder of prayer times and installation of DC according to gender.

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<sup>52</sup> Alek Abdan Syakuro, "Pengaruh Peningkatan...", hlm. 42.

<sup>53</sup> Annisa Sholiha, "Tinjauan Fatwa DSN No. 107/DSN-MUI/X/2016 Terhadap Penyelenggaraan Rumah Sakit Islam Sakinah di Mojokerto", *Skripsi* (Surabaya: UIN Sunan Ampel, 2018), hlm. 45.

<sup>54</sup> Alek Abdan Syakuro, "Pengaruh Peningkatan...", hlm. 9.

The service standards include; reading the *Basmalah* upon administering drugs and actions, ensuring hijab for patients, mandatory training for patient's *fiqh*, Islamic education (leaflets or spiritual books), EKG installation according to gender, wearing hijab for nursing mothers, wearing hijab in operating rooms and scheduling elective surgery to avoid certain prayer times. The sharia hospital certification itself is carried out by the DSN-MUI. This certification aims to convince patients and their families that the hospital has been thoroughly tested, proven by the sharia certificate. The sharia hospital certification standard refers to the criteria issued by the DSN-MUI. There is an absolute requirement of sharia hospital certification, which is that the hospital must pass the KARS accreditation (hospital accreditation commission). This is a requirement so that sharia hospitals must be of high quality and maintain patient safety, and this can be fulfilled by meeting KARS accreditation standards.

## 2. Minimum Standards for Sharia Hospital Services

Sharia hospitals have standards for obtaining a sharia certificate from the DSN-MUI, meaning that there are several standards that must be met by a hospital to obtain Halal certification. One of the standards in Sharia Hospital Certification is the existence of a minimum standard of service in sharia hospitals, the following are the minimum standards of service in the operation of a Sharia Hospital:<sup>55</sup>

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<sup>55</sup> MUKISI, *Pedoman SPM RS Syariah & Indikator Mutu Wajib Syariah* (Jakarta: MUKISI, 2017), hlm. 5

- a. Reading the *Basmallah* upon drug administration and action. That is, hospital staff verbally read and invite patients or their families to read the *basmallah* when administering drugs and actions.
- b. Hijab for patients. The hospital must provide facilities in the form of a hijab (veil, patient's shirt, or cloth) to cover the patient's entire body except for the face and palms. The hijab is provided by the hospital and given to Muslim patients when they first arrive and are given education about hijab.
- c. Mandatory training for patient's *fiqh*. The hospital holds *fiqh* learning activities for all hospital staffs, which includes training on *thaharah*, prayer guidance for patients, and *talqin*.
- d. Providing Islamic education (Spiritual Book). In the hospital, staffs provide religious books to Muslim patients as a means of Islamic education.
- e. EKG (electrocardiogram) placement according to gender. An electrocardiogram is a medical test equipment to detect abnormalities in the heart by measuring the electrical activity generated by the heart during contractions. Because the device is attached to the heart and this part is particularly sensitive, the equipment must be placed by a hospital staff of the same gender as the patient's gender.
- f. The use of hijab for nursing mothers. This is a facility provided by the hospital for breastfeeding mothers while hospital staffs provide education to Muslim patients. Apart from the hijab, clothes for nursing mothers are also provided.

- g. Wearing the hijab in the operating room. The hospital also has facilities in the form of clothes and veils for Muslim women patients in the operating room. The use of the hijab in the operating room is to cover the genitals of a patient who is undergoing surgery from preparation to exit from the operating room.
- h. The scheduling of elective operations does not interfere with prayer times. This is useful so that there is no need to recite prayers except in an emergency. Since the prayer is the most fundamental practice and is the distinguishable identity of Muslims which sets them apart from non-Muslims, it should not be abandoned.

### 3. Sharia Mandatory Quality Indicator

The hospital must meet the compulsory indicators that signifies the quality in hospital services. The following are some indicators of mandatory sharia qualities that must be met by sharia hospitals:<sup>56</sup>

- a. Patients with *dying* are accompanied by *talqin*. *Talqin* for patients with *sakaratul maut* is one of the efforts to assist patients so that they would pass away in a spiritually fulfilling manner by saying the sentence “*lā ilāha illallah*” at their last few breaths. The officers/nurses/staff at the hospital are obliged to accompany Muslim patients who are dying with the implementation of *talqin* according to hospital policies, but it must be monitored and measured to ensure optimal service at the end of the patient's life.

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<sup>56</sup> MUKISI, *Pedoman SPM RS Syariah...*, hlm. 33-34.

- b. Reminder for prayer times. Prayer is a compulsory worship activity that is carried out by all Muslims as a practice which aims to prepare their souls in the afterlife. For this purpose, prayers must continue to be carried out even while being hospitalized. In sharia hospitals, staffs must remind patients to perform *fardhu* prayers and provide prayer guidance and assistance if needed. This is useful so that all Muslim patients can pray.
  - c. Gender Appropriate DC fitting. DC placement must be in accordance with the catheter insertion procedure with due observance of sharia aspects, which is carried out by staffs of the same sex as the patient. This is useful for maintaining patient privacy, especially regarding the patient's genitals and the comfort of patients in receiving catheter installation services according to gender.
4. Sharia Hospital Code of Ethics

There are fundamental parts to strengthening sharia hospitals, especially in the process of certification of sharia hospitals. One of them is the sharia hospital code of ethics which is detailed in the articles below:<sup>57</sup>

a. Chapter 1 General Obligations of Sharia Hospitals

- 1) Article 1: sharia hospitals are obliged to comply with the Indonesian hospital code of ethics and the Indonesian sharia hospital code of ethics as well as all laws and regulations regarding hospitals in Indonesia.

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<sup>57</sup> MUKISI, *Kode Etik Rumah Sakit Syariah* (Jakarta: MUKISI, 2017), hlm. 4-30.

- 2) Article 2: sharia hospitals are obliged to strive to implement the values of *ṣidiq* (true and honest) that the hospital must have a vision, mission, and management, and service in the hospital that is true and honest and in line with “*Maqāṣid al-syariah al-Islāmiyyah*”
  - 3) Article 3: sharia hospitals are obliged to strive to implement trustworthy values by prioritizing quality, safe, and satisfying services on an ongoing basis with the application of Islamic values which are expected as a result of the practice of the principles of Islam.
  - 4) Article 4: sharia hospitals try to apply *faṭonah* (smart) values that all management and services in the hospital follow the development of the hospital and are based on up-to-date science and document all hospital activities and maintain all records/archives both medic and non-medic in an exceptional manner.
  - 5) Article 5: sharia hospitals try to apply *tabligh* values (right on target and communicative) and that the hospital is responsible for the strategy to carry out the mission and achieve the vision of the hospital, to provide education for patients and patients' families and as a means of *dakwah*.
- b. Chapter II Hospital Obligations Toward Community and Environment
- 1) Article 6: sharia hospitals are obliged to try to help improve the health of the surrounding community as part of the *dakwah bil hal*.

2) Article 7: in carrying out its operations, a sharia hospital must be responsible for the quality of the surrounding environment so that environmental pollution does not occur.

c. Chapter III Hospital Obligations Toward Patients

1) Article 8: sharia hospitals are obliged to strive to manage and serve patients in a lawful manner, maintain their genitals and help fulfill their obligations of worship as part of maintaining religion (*hifzh al-din*).

2) Article 9: a sharia hospital is obliged to provide medical services in accordance with the latest developments in science and provide strong information about the disease and its management plan as part of maintaining reason (*hifzh al-aql*).

3) Article 10: the hospital is obliged to strive to honor the dignity of patients with a biopsychospiritual approach, heed their rights and always ask for approval every time the staff is about to carry out service actions as part of maintaining the soul (*hifzh al-nafs*).

4) Article 11: sharia hospitals are obliged to respect the management of perinatal maternal services in accordance with sharia principles as part of maintaining offspring (*hifzh al-nasl*).

5) Article 12: sharia hospitals are obliged to make efforts to adjust their management policies based on affordability of services by the public and financial management according to sharia as part of maintaining assets and honor (*hifzh al-maal wa al-irdh*).



d. Chapter IV Hospital Obligations Toward Leaders, Staff, and Employees

- 1) Article 13: the hospital is obliged to strive to cultivate leaders, staff and employees with Islamic values.
- 2) Article 14: sharia hospitals are obliged to strive to ensure its leadership, staff and employees to always improve their knowledge and skills in their respective fields.
- 3) Article 15: that sharia hospitals try to ensure the creation of Islamic *ukhuwah* congregations between leaders, staff, and employees.
- 4) Article 16: that sharia hospitals are obliged to try to guarantee the health and safety of its employees.

e. Chapter V Relationship between Hospitals and Related Institutions

- 1) Article 17: that sharia hospitals are obliged to strive to maintain a good relationship with the owner on the principle of mutual advice, advising in truth and in patience.
- 2) Article 18: that sharia hospitals are obliged to try to maintain a good relationship with the Indonesian Ulema Council, government agencies or other bodies engaged in the health sector.
- 3) Article 19: that sharia hospitals are obliged to strive to maintain good relations between hospitals with the principles of competing in goodness (*fastabiqul khairot*).
- 4) Article 20: that sharia hospitals are obliged to endeavor to become a place for education for health and medical personnel.

f. Chapter VI Miscellaneous

- 1) Article 21: that sharia hospitals can carry out marketing promotions by displaying quality, safe, and satisfying services through morals and health promotion for the purpose of health education to the public.

5. Code of Ethics for Sharia Hospital Doctors

In addition to the code of ethics for sharia hospitals, there is also a code of ethics for doctors in sharia hospitals. The code of conduct was stipulated by MUKISI with due observance of the code of ethics that had previously existed in Indonesia. There are several articles in the code of ethics for doctors in sharia hospitals, including:<sup>58</sup>

a. Chapter I General Principles of Sharia Hospital Doctors

- 1) Article 1: that the essence of life is devotion to Allah SWT, then every Sharia hospital doctor is obliged to intend because of Allah by pledging “*bismillahirrahmaanirrohiim*” every time he will perform medical services.
- 2) Article 2: Whereas the medical profession is a choice of life in carrying out God's mandate as a caliph on earth in the field of medicine, every sharia hospital doctor is obliged to uphold, live and practice the doctor's oath and the code of ethics of Indonesian medicine.
- 3) Article 3: that the medical profession is one of the means of testing from Allah SWT to choose who is the best and the most beneficial, so every sharia

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<sup>58</sup> MUKISI, *Kode Etik...*, hlm. 5-30.

hospital doctor is obliged to do his best to serve patients to earn fulfilment in the afterlife.

- 4) Article 4: that in carrying out service as a doctor, every sharia hospital doctor is obliged to carry out the principles of Islam as a pillar of service and as the basis for implementing Islamic ethics.

b. Chapter II Obligations of Doctors Towards Patients

- 1) Article 5: that every doctor in a sharia hospital is obliged to respect the dignity of the patient, build effective communication and ask permission to perform any medical service because the patient has the right to autonomy over himself.
- 2) Article 6: that every sharia hospital doctor is obliged to try to save patients and to be careful to protect the lives of human beings as a noble job.
- 3) Article 7: that every sharia hospital doctor is obliged to be friendly and gentle.
- 4) Article 8: that every doctor in a sharia hospital is obliged to maintain and cover the patient's genitals, except solely for the need for medical action.
- 5) Article 9: that every sharia hospital doctor is obliged to diagnose a disease and provide treatment and make a prognosis based on empirical data, while the course of disease and healing rests on only Allah SWT who knows best.
- 6) Article 10: that every sharia hospital doctor is obliged to treat patients according to medical service standards and in accordance with up-to-date science.

- 7) Article 11: that every sharia hospital doctor is obliged to make efforts to treat it with halal ingredients.
  - 8) Article 12: that every doctor in a sharia hospital is obliged to assist the fulfillment of worship for patients.
  - 9) Article 13: that every sharia hospital doctor is obliged to immediately serve the patient, be cheerful, and happy when he is near the patient.
  - 10) Article 14: that every sharia hospital doctor is obliged to protect the patient's faith from shirk, especially for terminal phase patients.
  - 11) Article 15: that every sharia hospital doctor is obliged to pray for the patient's recovery.
- c. Chapter III Doctor's Obligations to Peers
- 1) Article 16: that every sharia hospital doctor is obliged to establish friendship and respect for each other's expertise.
  - 2) Article 17: that every Sharia hospital doctor is obliged to help colleagues in kindness.
- d. Chapter IV Doctor's Obligations Toward Himself
7. Article 18: that every doctor in a sharia hospital is obliged to maintain his own health in order to be able to carry out the medical profession properly.
  8. Article 19: that every sharia hospital doctor is obliged to remind the quality of his professionalism.
  9. Article 20: that every sharia hospital doctor is obliged to improve the quality of his obligatory worship to Allah SWT.

### C. Types of Contract in Implementation of Sharia Hospital

*Akad* or Contract means a bond or agreement, while according to the term “contract”, it is a transaction or agreement between one person who hands over and another person who accepts to carry out an act, such as a sale and purchase contract and a lease agreement. With reference to the fatwa stipulated in DSN MUI NO. 107/DSN-MUI/X/2016 regarding guidelines for the operation of hospitals based on sharia principles on October 16, 2016, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) held a plenary meeting and decided on a fatwa on Guidelines for Hospital Operation Based on Sharia Principles.<sup>59</sup>

#### 1. *Ijārah*

##### a. Definition of *Ijārah*

The term *al- Ijārah* in Arabic means wages, rent, services, or rewards.<sup>60</sup>

*Ijarah* is a contract of transfer of use rights over goods or services, through payment of rental wages, without being followed by the transfer of ownership of the goods themselves.<sup>61</sup> The term “*Ijārah*” has been defined as a contract between two parties, the lessor and the lessee, where the lessee enjoys or reaps a specific service or benefit against a specified consideration or rent from the asset owned by the lessor. It is a lease agreement under which a certain asset is

<sup>59</sup> Anonim, *Himpunan Fatwa Keuangan Syari'ah* (Jakarta: Erlangga, 2016), hlm. 302.

<sup>60</sup> Nasrun Haoen., *Fiqh Muamalah* (Jakarta: Gaya Media Pratama, 2007 ), hlm. 228.

<sup>61</sup> Muhammad Syafii Antonio, *Bank Syariah dari Teori ke Praktik* (Jakarta: Gema Insani, 2001), hlm. 177.

leased out by the lessor to a lessee against specific rent or rental for a fixed period.<sup>62</sup> In terminology, there are several definitions of the *ijarah* contract put forward by *fiqh* scholars.

The Hanafiyah Ulama defines it as :

عقد علي منافع بعوضٍ

“Transactions towards a specific intended benefit that are permissible and may be used for certain rewards”

Whereas *Malikiyah* and *Hanabilah* are defined by scholars as :

تَمْلِيكُ مَنَافِعِ شَيْءٍ مَّبَاحَةٍ مُدَّةَ مَعْلُومَةٍ بِعَوْضٍ

“Ownership of the benefits of something that is allowed within a certain time with a reward”

A lease or *Ijārah* contract can be used as a form of financing. Initially, it is not a form of financing, but a business activity such as purchase and sale.<sup>63</sup> Individuals who need financing to buy assets can visit the owner of the fund, in this case a bank or financial and non-financial institution that has received sharia standardization by the MUI DSN for financing productive assets. The owner of the fund then purchases the item in question and then leases it out to those who need the asset.

#### b. Legal Basis of *Ijārah*

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<sup>62</sup> Maleeha Fatima, “Differences and Similarities Between Ijarah and Conventional Operating Lease Contracts, College of Management Sciences Paf-Karachi Institute of Economics and Technology”, Vol. 01 No. 4, 2006, hlm. - , *Market Forces* January, <http://pafkiet.edu.pk/marketforces/index.php/marketforces/article/download/56/59>, Di akses pada Selasa 6 Oktober 2020, pada pukul 13.34 wib.

<sup>63</sup> Ascarya, *Akad dan Produk Bank Syariah* (Jakarta: Rajawali Press, 2015), hlm. 101.

1) Al-Qur'an, Surah Az-Zukhruf, 43: 32,

أَهُمْ يَقْسِمُونَ رِزْقَ رَبِّكَ نَحْنُ قَسَمْنَا بَيْنَهُمْ مَعِيشَتَهُمْ فِي الْحَيَاةِ الدُّنْيَا وَرَفَعْنَا بَعْضَهُمْ فَوْقَ بَعْضٍ دَرَجَاتٍ لِيَتَّخِذَ بَعْضُهُمْ بَعْضًا سُخْرِيًّا....

“Is it they who allocate the mercy of your Lord? It is We who have allocated their livelihood in this life, and We elevated some of them in rank above others...”<sup>64</sup>

Furthermore, in Surah Al-Baqarah 2:233,

وَإِنْ أَرَدْتُمْ أَنْ نَسْتَرْضِعُوَ أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَاءَ أَيْتِمٍ بِالْمَعْرِفِ وَأَتَّقُوا اللَّهَ وَعَلِمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

“...You commit no error by hiring nursingmothers, as long as you pay them fairly. And be wary of God, and know that God is Seeing of what you do.”<sup>65</sup>

2) Hadith

The hadith narrated by Ibn Majah from Ibn Umar explains that the Prophet said:

أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَّ عَرْقُهُ

“Give workers their wages before their sweat runs dry”.<sup>66</sup>

Meanwhile, in the hadith narrated by Abd ar-Razzaq Abu Hurayrah and Abu Sa'id al-Khudri, the Prophet SAW said,

مَنْ اسْتَأْجَرَ أَجِيرًا فَلْيُعَلِّمُهُ أَجْرَهُ

“Whoever employs workers, should also declare their wages ”

<sup>64</sup> Talal Itani, *The Quran* (USA: Clear Quran, 2012), hlm 257, [www.holybooks.com](http://www.holybooks.com).

<sup>65</sup> Talal Itani, *The Quran* (USA: Clear Quran, 2012), hlm 18, [www.holybooks.com](http://www.holybooks.com).

The two hadiths above explain the obligation of an employer who employs workers to provide wages that are commensurate with the work they provide. The parable of “sweat runs dry” means that the employer should not delay payment of wages after the work is done.

### 3) Fiqh Rules

The first rule is :

الأصل في المعاملات الإباحة إلا أن يدل دليل على تحريمها

“Basically, all forms of *muamalah* can be done unless there is evidence that forbids it”

The second rule :

درء المفسد مقدم على جلب المصالح

“Avoiding *mafsadat* or damage must take precedence over bringing benefit”

### 4) Principles and Terms

The principles of the *ijarah* contract that must be fulfilled in financial transactions are: *Ijab* and *Qobul*, *Musta’jir* (tenant), *Mujir* (owner), *Ma’jūr* (leased assets), as well as *Ujrah* (wages or rental prices). The terms of the *ijara* contract consist of the following: the two persons who act, according to the scholars of Syafi’iyah and Hanabilah, are required to be mature and sensible, so that no disputes shall arise in the future; the object of *ijarah* may be submitted and used directly and must not be defective; the object of *ijārah* is something that is legalized by sharia; the object of *ijārah* is something that



can be rented out, and; the rental wage in the *ijārah* contract must be clear and agreed upon by both parties.

## 2. *Murābahah*

### a. Definition of *Murābahah*

*Murābahah* is an Arabic word that refers to a simple sales contract in which, in practice, the seller buys a commodity and sells it to the customer for a fee plus an agreed mark-up, or profit margin, disclosed to the buyer. The Accounting and Auditing Organization for Islamic Financial Institutions (AAOIFI) defines a *murābahah* contract as a transaction in which a customer promises to purchase an object from a seller (the financier) at an agreed price that includes an agreed profit margin that the customer pays either in a lump sum or by instalment.<sup>67</sup> *Murābahah* is also known as *bā'i bitsamanil 'ajil*. The word *murābahah* derives from the Arabic word *ribhu* which means profit.<sup>68</sup> Therefore, *murābahah* means mutual benefit, which means a sale of the item plus the agreed profit.<sup>69</sup>

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<sup>67</sup> Abdulwahid Hassan. "The Challenges and Prospects of Islamic Finance in Australia: A Case Study of Murabaha Contract", *Tesis* (Victoria: Victoria University, College of Law and Justice, 2020) hlm. 5-6.

<sup>68</sup> Ascarya, *Akad dan...*, hlm. 136.

<sup>69</sup> Isnawati Rais, dan Hasanidin, *Fiqih Muamalah dan Aplikasinya pada LKS* (Ciputat: Lembaga Penelitian UIN Syarif Hidayatullah Jakarta, 2011), hlm. 87.

The term *murābahah* can also be defined as a sale and purchase agreement at the original price with an agreed additional profit.<sup>70</sup> In *murābahah*, when the buyer wants to purchase goods from the seller, the seller must disclose the original price of the goods. After having knowledge of the original price of the goods, the seller and the buyer agree on the profit the seller must get from the additional selling price to the buyer. There are several opinions among *fiqh* scholars about *murābahah* :

The Hanafiyah Ulama argues that *murābahah* is the “transfer of something that is owned by the initial contract and the initial price accompanied by additional benefits”.

Meanwhile, Malikiyah Ulama argues that *murābahah* is the purchase and sale where the owner of the goods states the purchase price of the goods, then he takes advantage of the buyer at the same time by saying, "I bought it for ten dinars and you give me a profit of one dinar or two dinars." Or detailing it by saying, "You give a profit of one dirham per one dinar." Or it can also be determined by a certain size or by using a percentage. The Syafi'iyah and Hanabilah scholars argue that *murābahah* is the “purchase and sale at the cost of

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<sup>70</sup> Muhammad Syafii Antonio, *Bank Syariah dari Teori ke Praktik* (Jakarta: Gema Insani Press, 2002), hlm. 101.

the goods or the seller's cost plus a profit of one dirham for every ten dinars”.

Or for example, provided that both parties who trade know the cost of goods.<sup>71</sup>

## b. Legal Basis of *Murābahah*

### 1) Al-Qur‘an

In The Word of Allah Surah al-Baqarah 2:275,

.....وَأَحَلَّ اللَّهُ الْبَيْعَ وَحَرَّمَ الرِّبَا.....

It reads, “Allah has permitted commerce, and has forbidden usury.”<sup>72</sup>

Furthermore, The Word of Allah, Surah An-Nisa 4:29,

...إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ...

It reads, “... but trade by mutual consente...”<sup>73</sup>

### 2) Hadith

The Hadith narrated by Baihaqi and Ibn Majah goes as follows, from Abu

Sa'id Al-Khudri, Rasulullah SAW said :

عَنْ أَبِي سَعِيدٍ الْخُدْرِيِّ رَضِيَ اللَّهُ عَنْهُ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ قَالَ: إِنَّمَا الْبَيْعُ عَنْ تَرَاضٍ, (رواه البيهقي وابن ماجه و صححه)

“In fact, purchase and sale must be done consensually”. (Reported by al-Baihaqi and Ibn Majah, and judged as authentic by Ibn Hibban)

<sup>71</sup> Muhammad Farid, “Murabahah dalam Presfektif Fiqih Mazhab”, *Jurnal Pengembangan Ilmu Keislaman*, Vol. 8. hlm. 118. diakses pada 6 okt 2020, <http://ejournal.iaintulungagung.ac.id/index.php/epis/article/view/40>.

<sup>72</sup> Talal Itani, *The Quran* (USA: Clear Quran, 2012), hlm.23.,

<sup>73</sup> Talal Itani, *The Quran* (USA: Clear Quran, 2012), hlm 40.,

Whereas the hadith narrated by Ibn Majah goes, from Shuhaib the Prophet SAW said, Allah SWT said :

عَنْ صُهَيْبِ رَضِيَ اللَّهُ عَنْهُ، أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: ثَلَاثٌ فِيهِنَّ الْبَيْعُ إِلَى أَجَلٍ، وَالْمُقَارَضَةُ، وَخَلْطُ الْبُرِّ بِالسَّعِيرِ لِلْبَيْتِ لِلْبَيْعِ (رواه ابن ماجه عن صهيب)

“There are three things that contain blessings: purchase and sale not in cash, *muqaradhah*, and mixing wheat with millet for household needs, not for sale” (Narrated by Ibn Majah from Shuhaib).

The two hadiths above explain that purchase and sale must be carried out voluntarily without any coercion which will cause losses on one side, and that purchase and sale is one of the activities that contains blessings.

### 3) Fiqh Rules

الْأَصْلُ فِي الْمَعَامَلَاتِ الْإِبَاحَةُ إِلَّا أَنْ يَدُلَّ دَلِيلٌ عَلَى تَحْرِيمِهَا

“Basically, all forms of *muamalah* can be done unless there is an argument that prohibits it”

### 4) Principles and Terms

The scholars stated that there are four laws regarding *murābahah* contract, namely :

- a) There are those who engages in *akad* or *al-mutaqidain* (seller and buyer);
- b) There is *sigat* (refers to consent and *qabul*);
- c) There is an item to be purchased;
- d) There is a substitute for the item exchange rate.<sup>74</sup>

Requirements for a *murābahah* contract include :

<sup>74</sup> Nasrun Haroen, *Fiqh Muamalah...*, hlm. 115.

- a) The seller notifies the buyer of the cost of capital;
- b) The first contract must be valid in accordance with the stipulated principles;
- c) The contract must be free from usury;
- d) The seller must explain to the buyer if there is a defect in the goods that have been purchased;
- e) The seller must convey all matters relating to the purchase, for example, if the purchase is made in debt.

In principle, if the above conditions are not met, the buyer has options, namely:

- a) Continue the purchase as it is.
- b) Returns to the seller and expresses disapproval of the goods sold.
- c) Cancel the contract.<sup>75</sup>

### 3. *Ijārah Muntahiyah bit-Tamlik.*

#### a. Definition of *Ijārah Muntahiyah bit-tamlik*

*Ijārah Muntahiyah bit-Tamlik* (IMBT) is a kind of combination between a sale and purchase contract, or more precisely a lease that ends with the ownership of the goods in the hands of the lessee. The nature of this transfer of

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<sup>75</sup> Muhammad Syafii Antonio, *Bank Syariah...*, hlm. 102.

ownership also distinguishes it from ordinary *ijārah*.<sup>76</sup> IMBT is a combination of leasing (*ijārah*) and sale and purchase or grant at the end of the lease period.<sup>77</sup> It can be concluded that there are two forms of combination of contracts (hybrid contract) at the same time, namely leasing by purchase and sale and leasing with grants.

## b. Legal Basis of *Ijārah Muntahiyah bit-tamlik*

### 1) Al-Qur'an.

In The Word of Allah, Surah Az-Zukhruf, 43:32, it reads,

أَلَمْ يَفْسُمُونَ رَحْمَتَ رَبِّكَ أَنْ قَسَمْنَا بَيْنَهُمْ مَعِيشَتَهُمْ فِي الْحَيَاةِ الدُّنْيَا وَرَفَعْنَا بَعْضَهُمْ فَوْقَ بَعْضٍ دَرَجَاتٍ لِيَتَّخِذَ بَعْضُهُمْ بَعْضًا سُخْرِيًّا

“Is it they who allocate the mercy of your Lord? It is We who have allocated their livelihood in this life, and We elevated some of them in rank above others”<sup>78</sup>

Furthermore, in The Word of Allah, Surah Al-Baqarah 2:233, it reads,

وَإِنْ أَرَدْتُمْ أَنْ نَسْتَرْضِعَ أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَاءَاتِيْتُمْ بِالْمَعْرُوفِ وَأَتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ

“...You commit no error by hiring nursingmothers, as long as you pay them fairly. And be wary of God, and know that God is Seeing of what you do.”<sup>79</sup>

### 2) Hadith

<sup>76</sup> Muhammad Syafii Antonio, *Bank Syariah...*, hlm. 108.

<sup>77</sup> Adiwarman A. Karim, *Bank Islam (Analisis fiqih dan Keuangan)*, Cetakan ke-3 (Jakarta: RajaGrafindo Persada, 2006), hlm 165.

<sup>78</sup> Talal Itani, *The Quran* (USA: Clear Quran, 2012), hlm 257, [www.holybooks.com](http://www.holybooks.com)

<sup>79</sup> Talal Itani, *The Quran* (USA: Clear Quran, 2012), hlm 18, [www.holybooks.com](http://www.holybooks.com).

The hadith narrated by Ibn Majah from Ibn Umar explains that the Prophet said ;

أَعْطُوا الْأَجِيرَ أَجْرَهُ قَبْلَ أَنْ يَجِفَّ عَرْقُهُ

“Give workers their wages before their sweat runs dry”

Meanwhile, in the hadith narrated by Abd ar-Razzaq Abu Hurayrah and Abu Sa'id al-Khudri, the Prophet SAW said ;

مَنْ اسْتَأْجَرَ أَجِيرًا فَلْيُعَلِّمَهُ أَجْرَهُ.

“Whoever employs workers, should also declare their wages”

The two hadiths above explain the obligation of an employer who employs workers to provide wages that are commensurate with the work they provide. The parable of “sweat runs dry” means that the employer should not delay payment of wages after the work is done.

### 3) Fiqh Rules

The first rule means:

الْأَصْلُ فِي الْمَعَامَلَاتِ الْإِبَاحَةُ إِلَّا أَنْ يَدُلَّ دَلِيلٌ عَلَى تَحْرِيمِهَا

“Basically, all forms of *muamalah* can be done unless there is evidence that prohibits it”

### 4) Principles and Terms

There are several terms of the *Ijarah Muntahiyah bit-tamlik* contract that must be fulfilled in financial transactions, namely :

- a) *Ijab* and *Qobul*;
- b) *Musta'jir* (tenant);

- c) *Mu'jīr* (owner);
- d) *Ma'jūr* (leased asset) and;
- e) *Ujrah* (wages or rental prices).

Meanwhile, the requirements of the *Ijarah Muntahiyah bit-tamlik* contract that must be fulfilled in financial transactions include :

- a) Making a contract, which must exist in order for the existence of a contract to be recognized by *syara*.
- b) The conditions for the validity of the contract are the absence of five things that destroy the legality of the contract, namely the unclear types that cause quarrels, the existence of coercion, limiting ownership of an item, detection of an element of deception, and signs of dangerous implications in implementing the contract. In terms of the validity of the contract, for the continuity of the contract, two conditions are needed for ownership or power, and in the object of the contract, there are no rights reserved for other people.<sup>80</sup>

#### 4. *Musyārahah Mutanāqīshah*

##### a. Definition of *Musyārahah Mutanāqīshah*

*Musyārahah Mutanāqīshah* is a derivative product of the *musyārahah* contract, which is a form of cooperation agreement between two or more

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<sup>80</sup> Dzakkiyah Rusydatul Umam, Rachmi Sulistyarini, Siti Hamidah, "Analisis Yuridis Akad Ijarah Muntahiyah Bittamlik (IMBT) dalam Prespektif Hukum Islam dan Kitab Undang-Undang Hukum Perdata" *Jurnal Hukum Fakultas Brawijaya*, Hlm. 6



parties. The root word for *Musyārahah* is *syirkah* which derives from the word *syaraka-yusyriku-syarkan-syariah-syirkatan* (*syirkah*), which means cooperation, company or group/collection. *Musyārahah* or *syirkah* is a collaboration between capital and profit, whereas *mutanāqishah* derives from the word *yatanaqishu-mutanaqishun* which means gradually reducing.<sup>81</sup> There are several opinions among scholars regarding *musyārahah mutanāqishah* contained in the DSN MUI fatwa No.73, among others :

- 1) Ibn Qudamah's opinion on *musyārahah* is that if one of the two partners (*syarik*) buys a portion (part, *hishshah*) of another *shariqah*, then it is permitted by the law, because (in fact) he bought the property of another party.
- 2) Ibn Abidin's opinion regarding *musyārahah mutanāqishah* is that if one of the two partners (*syarik*) in the ownership of a building sells its portion (*hissah*) to another party, then it is prohibited by the law; whereas if you sell the portion to the *syarik*, then it is permitted by the law.
- 3) Wahbah Zuhaili's opinion regarding *musyārahah mutanāqishah* is that "This *musyārahah mutanāqishah* is justified in sharia, because as *Ijārah Muntamahiyah bi-al-Tamlik* relies on a promise from the Bank to its partners (customers) that the Bank will sell to the partner its share of ownership in *Syirkah* if the partner has paid the Bank's portion price. During this period,

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<sup>81</sup> Nadrattuzaman Hosen, "Musyarakah Mutanaqishah", *Jurnal Ekonomi Syariah*, vol 1, hlm. 47, diakses pada 6 okt 2020, <http://journal.uinjkt.ac.id/index.php/iqtishad/article/view/2463/1861>.

the *musyārahah mutanāqīshah* is seen as a *Syirkah Inan*, because both parties provide *ra'sul mal* contributions, and the Bank delegates to its customers to manage business activities. After completion of the *Syirkah*, the Bank sells all or part of its portion to partners, provided that the sales contract is carried out separately, which is not related to the *Syirkah* contract."

- 4) Kamal Taufiq Muhammad Hathab also stated his opinion regarding *musyārahah mutanāqīshah*, which is that, given that the nature (character) of *musyarakah* is a type of purchase and sale - because *musyārahah* is considered as the purchase of a portion (*hishshah*) by *musya'* (no limit is determined) of a subject - then if one of the partners (*shariq*) wants to relinquish his right from *shirkah*, he must sell the *hishshah* he has, either to a third party or to another *sharik* who continues the *musyarakah*.
- 5) Nuruddin Abdul Karim al-Kawamilah stated that *Mutanāqīshah* is seen as a form of *Musyārahah* financing in its general form. This is because *musyarakah* financing in its general form consists of several different types and types. From the perspective of "sustainability financing" (*istimrariyah al-tamwil*), *Musyārahah* is divided into three types: financing for one transaction, permanent *musyārahah* financing, and *musyārahah mutanāqīshah* financing. MMQ financing is a form of profit-sharing partnership financing between BUS/UUS/BPRS and the customer in the context of ownership of a certain property asset that is jointly owned based on the principle of *syirkah*

'*inan* where the *hishshah* (portion of capital) of the Bank decreases and gradually transfers to the customer through a commercial installment or transfer purchase mechanism (*bā'i*). Profit sharing between the Bank and the customer is based on the commercial use of the benefits of the joint asset in the form of free income from leasing assets under an *ijārah* (lease) agreement according to the profit-sharing ratio and the agreed rental fee.

b. Legal Basis of *Musyārahah Mutanāqīshah*

1) Al-Qur'an

The Word of Allah. the letter QS. Shad 38:24, it says :

وَأَنَّ كَثِيرًا مِّنَ الْخُلَطَاءِ لَيَبْغِي بَعْضُهُمْ عَلَىٰ بَعْضٍ إِلَّا الَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَقَلِيلٌ مَّا هُمْ....

“...Many partners take advantage of one another, except those who believe and do good deeds, but these are so few...”<sup>82</sup>

The Word of Allah, in the letter QS. Al-Ma'idah 5:1, it says :

يَا أَيُّهَا الَّذِينَ آمَنُوا أَوْفُوا بِالْعُقُودِ....

“O you who believe! Fulfill your commitments...”<sup>83</sup>

2) Hadith

In the hadith narrated by Abu Daud from Abu Hurairah, Rasulullah SAW said, "Allah SWT. Said :

<sup>82</sup> Talal Itani, *The Quran...*, hlm. 237

<sup>83</sup> Talal Itani, *The Quran...*, hlm. 51

عَنْ أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ قُل: قُل رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: قُل اللَّهُ تَعَالَى: إِنَّ اللَّهَ يَقُولُ أَنَا ثَلَاثُ الشَّرِّ يَكِينِ مَا لَمْ يَخُنْ أَحَدٌ هُمَا صَا حِبَّهُ فَإِذَا خَانَ خَرَجْتُ مِنْ بَيْنِهِمَا  
 “I am the third party of the two people who have an agreement as long as one party does not betray the other. If either party has betrayed, I'm no longer a part of it”. (Narrated by Abu Daud, confirmed by al-Hakim, from Abu Hurairah).

The Hadith of the Prophet narrated by Tirmidhi from 'Amr bin' Auf says,

الْصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ إِلَّا صُلْحًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ  
 إِلَّا شَرَّ طًا حَرَّمَ حَلَالًا أَوْ أَحَلَّ حَرَامًا

“Peace can be carried out among the Muslims, except peace which forbids what is lawful or justifies what is haram; and the Muslims are bound by their conditions except those that prohibit what is lawful or justify what is haram”.

Both hadiths clarify that Allah will be with two people who unite.

Allah will bless the two people who associate with the requisite that no party betrays another. If either party commits a betrayal, Allah will revoke the blessing of the union. Furthermore, if there are disagreements between unionized people, then they should be resolved with peaceful means.

### 3) Fiqh Rules

The *fiqh* rule is that ;

الْأَصْلُ فِي الْمَعَامَلَاتِ الْإِبَاحَةُ إِلَّا أَنْ يَدُلَّ دَلِيلٌ عَلَى تَحْرِيمِهَا

“Basically, all forms of *muamalah* can be done unless there is evidence that forbids it”

### 5) Principles and Conditions As an agreement, Principles and Terms

*Syirkah* or an association must fulfill all of the principles and conditions so that the agreement is valid and has legal consequences such as the law for the parties who make it. Those that become principles of *syirkah* according to the provisions of Islamic law are as follows.<sup>84</sup>

- a) *Ṣigat (lafadz akad)*, *Ṣigat* in essence is the willingness of the parties to establish a union/cooperation in running a business. Examples of *akad lafadz* is "I am willing to engage in a *syirkah* with you for this or that business" and the other party says: "I accept your offer".
- b) *Syarik* is a partner, namely the party that carries out the *syirkah (musyārahah)* contract.
- c) *Hishshah* is a portion or share of *shariqah* in *musyārahah* wealth which is *musya`* in nature.
- d) *Musya`* is a portion or share of *shariqah* in the wealth of *musyārahah* (common property) in value and cannot be physically defined.<sup>85</sup>
- e) The main framework. Each association must have a clear goal or framework, and it must be justifiable according to sharia law.

In the *musyārahah mutanāqishah* contract, there is an element of cooperation (*syirkah*) and an element of rent (*ijārah*). Cooperation is carried out in terms of equity or fund participation and ownership cooperation.

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<sup>84</sup> Abdul Ghafar Anshori, *Hukum Perjanjian Islam di Indonesia: Konsep, Regulasi, dan Implementasi* (Yogyakarta: Universitas Gajah Mada Press, 2010), hlm. 120.

<sup>85</sup> Anonim, *Fatwa DSN No. 73/DSN-MUI/XI/2008 tentang Musyarakah Mutanaqishah*, (Jakarta: DSN-MUI, 2008), hlm. 4.

Meanwhile, a lease is a compensation provided by one party to another. The main provisions contained in the *musyārahah mutanāqīshah* are the main provisions of the two elements. Furthermore, the conditions for implementing the *syirkah* contract are as follows :

- a) Each party must express an agreement and a willingness to work together.
- b) Both parties must give mutual trust to each other.
- c) Ensure the respective rights in the ownership of the object of the contract.
- d) The *musyarakah mutanaqishah* contract can be directed to *shariq* or other parties.
- e) If the *musyārahah* asset becomes the object of *ijārah*, then the *syarik* (customer) can lease the asset at an agreed value of *ujrah*.
- f) Profits obtained from the *ujrah* are divided according to the ratio agreed in the contract, while losses must be based on the proportion of ownership. The profit ratio can adhere to the changes in the proportion of ownership according to the agreement of the *shariqs*.
- g) The level or size or portion of ownership of the *Musyārahah syarik* (LKS) asset which is reduced due to payment by the *syarik* (customer), must be clear and agreed upon in the contract.
- h) The cost of acquiring *Musyārahah* assets shall be borne jointly while the cost of transfer of ownership is borne by the buyer.<sup>86</sup> Because the

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<sup>86</sup> Anonim, Fatwa DSN..., hlm. 5

*musyārahah mutanāqīshah* contract deals with the element of rent, the basic provisions must follow the principles and conditions in the *ijārah* contract.

## 5. *Muḍārabah*

### a. Definition of *Muḍārabah*

*Muḍarabah* is taken from the word الضَّ بٌ فِي الْأَرْضِ which means السَّفَرُ لِلتَّجَارِ namely, traveling to trade. This is in accordance with the word of Allah in Surah al-Muzammil 73:20 that goes, “and those who walk the earth, seek some of the gifts of Allah”

*Muḍarabah* in Arabic also derives from the word: ضَارَبَ which is synonymous with: إِجْرَى as in the sentence: ضَارَبَ لِفُلَانٍ فِي مَالِهِ which means: إِجْرَى لَهُ namely, he provides capital to trade.<sup>87</sup> The word ضَرَبَ also means to hit and walk. The definition of hitting and walking refers to the process of someone bearing their feet in running a business.<sup>88</sup>

Etymologically, *muḍarabah* is a contract or agreement between the owner of capital (*rab al-mal*) and the user of funds (*muḍarib*) to be used for productive activities in which profits are shared between the owner of the

<sup>87</sup> Ahmad Wardi Muslich, *Fiqh Muamalat* (Jakarta: Amzah, 2013), hlm. 365.

<sup>88</sup> Muhammad Syafii Antonio..., hlm. 85.

capital and the manager of the capital.<sup>89</sup> *Muḍārabah* is a kind of partnership where one partner provides financial capital to the other for investing it in a commercial enterprise. The owner of financial capital is called “*rabb-ul-mal*”, and the partner who focuses on entrepreneurial skills is called “*Muḍarib*”.<sup>90</sup>

There are several definitions of *muḍārabah* as put forward by various scholars, including :

- 1) Sayyid Sabiq defines *muḍārabah* as “an agreement made by two parties, one of which becomes an investor to trade, provided that the profit is divided in two according to mutual agreement”
- 2) Ibn Qudamah defines *muḍārabah* as an agreement where “the investor hands over a certain amount of capital to the manager to be traded, and then is entitled to a certain share of the profits”
- 3) Imam Taqiyuddin defines *muḍārabah* as “a contract on assets, which is then managed by the capital manager for trading”.<sup>91</sup>

The profit-sharing ratio between investors and capital managers must be agreed upon at the beginning of the agreement. The amount of the profit-sharing ratio for each party is not regulated in sharia, but instead depends on

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<sup>89</sup> Mardani, *Fiqh Ekonomi Syariah* (Jakarta: Kencana, 2012), hlm. 196.

<sup>90</sup> Azhar, “Islamic Business Contracts and Microfinance-A Case of Mudaraba Nadeem”, *Munich Personal Repec Archive (MPRA) Paper*, No. 27194, 27 October 2010, hlm. - ,di akses pada Selasa 6 okt 2020, <https://mpr.a.ub.uni-muenchen.de/27194/>

<sup>91</sup> Isnawati Rais, dan Hasanidin, *Fiqh Muamalah dan Aplikasinya pada LKS*, hlm. 118.



their agreement. The profit-sharing ratio can be divided equally by 50:50, but it can also be 30:70, 60:40, or any other agreed proportion. Aside from the profit-sharing portion received by the manager, the manager is not allowed to ask for a salary or other compensation for his work. All schools agree on this point. However, Imam Ahmad allowed the manager to receive daily food allowance from the *muḍārabah* account. The scholars of the Hanafi school allow managers to receive daily allowance such as accommodation, meals and transportation when on a business trip outside the city.<sup>92</sup>

#### b. Basic Law of *Muḍārabah*

##### 1) Al-Qur`an

The Word of God, Surah Al-Muzammil 73:20 which reads,

وَعَاخِرُونَ يَصْرِفُونَ فِي الْأَرْضِ يَتَّبِعُونَ مِنْ فَضْلِ اللَّهِ

“and others travelling through the land, seeking God’s bounty”<sup>93</sup>

Allah says in Jumuh`ah Surah 62:10, which reads,

فَإِذَا قُضِيَتِ الصَّلَاةُ فَانْتَشِرُوا فِي الْأَرْضِ وَابْتَغُوا مِنْ فَضْلِ اللَّهِ

“Then, when the prayer is concluded, disperse through the land, and seek God’s bounty...”<sup>94</sup>

The Word of God, Surah Al-Baqarah 2:198, which reads,

لَيْسَ عَلَيْكُمْ جُنَاحٌ أَنْ تَبْتَغُوا فَضْلًا مِنْ رَبِّكُمْ

<sup>92</sup> Ascarya, *Akad dan...*, hlm. 62.

<sup>93</sup> Talal Itani, *The Quran...*, hlm 308

<sup>94</sup> Talal Itani, *The Quran...*, hlm 295

“You commit no error by seeking bounty from your Lord...”<sup>95</sup>

## 2) Hadith

The hadith narrated by Ibn Majah from explains that,

عن صُهَيْبِ رَضِيَ اللَّهُ عَنْهُ، قَالَ : قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ : ثَلَاثٌ فِيهِنَّ الْبِرْكَةُ،  
الْبَيْعُ إِلَى أَجَلٍ، وَالْمَقَارَضَةُ، وَأَخْلَاطُ الْبُرِّ بِالشَّعِيرِ، لِلْبَيْتِ لِالْبَيْعِ

“From shuhaib ra, Rasulullah SAW said: there are three things in which there is a blessing : purchase and sale not in cash, *Muḍārabah*, and mix wheat with flour for household use, not for sale.

The hadiths explain that *muḍārabah* is one of the blessed activities, and the prophet once gave conditions to the *muḍarib* that must be met in *muḍārabah* transactions, and if these conditions are violated, then the *muḍarib* is ready to bear the risks.

## 3) Fiqh Rules

The *fiqh* rule is that

الأصلُ في المعاملات الإباحة إلا أن يدلَّ دليلٌ على تحريمها

“Basically, all forms of *muamalah* can be done unless there is evidence that forbids it”

## 4) Principles and Conditions. Principles and Terms

The majority of *muḍārabah fiqh* scholars categorized the principles into categories, namely :

- a) *Aqid* (capital owners and managers of capital),
- b) *Maqūd alaiḥ* (capital, effort and profit) and,

<sup>95</sup> Talal Itani, *The Quran...*, hlm. 15

c) *Ṣigat* (consent and *kabul*).

As for the conditions for the validity of the *muḍārabah* agreement relating to the principles themselves, they include :

- a) It is required that both parties are owners of capital and business executives, both must have competence for activities in the sense that both parties are mature, intelligent, competent and not prohibited in empowering his property.
- b) The object of the transaction, such as capital, must be in the form of currency, the size of which must be clearly known and not in the form of deferred form; it must be able to be handed over to the capital manager.
- c) For commercial businesses, the capital manager should not be borne with difficult provisions.
- d) The profit ratio must be clearly known and divided by a percentage which is balanced or even.
- e) The owner of the capital pronounces the consent such as "I give this capital to you for business, if there is a profit it will be divided in half" and a *qobul* greeting from the capital manager.

## 6. *Wakalah Bil Ujrah*

- a. Definition of *Wakalah Bil Ujrah*.

*Wakalah* or *wikalah* is a *masdar ism* which etymologically means *taukil*, namely to submit, represent, and protect.<sup>96</sup> *Wakalah* is the handover by a person as the first party to another as the second party in matters represented in this case the second party only does something as limited as the power or authority given by the first party. But if the power has been exercised accordingly that is required, the order belongs entirely to the first party or the grantor of power.

The concept of the *wakalah bil-ujrah* contract includes the *wakalah* contract with the *ijarah* contract, where the customer as the buyer will buy a product offered by the bank and then ask the bank to represent the purchase of the product purchased by the customer. After the contract process is complete, the *wakalah* is carried out by the bank as the selling party asking for a reward, also known as a fee or *ujrah*, to the customer as the party represented by the bank. The provision of the *wakalah* contract is called the *wakalah bil ujarah* contract. This is in accordance with the Fatwa DSN MUI Number: 34/DSN-MUI/XI/2002. *Wakalah bil ujarah* occurs when the customer authorizes the bank in exchange for giving *ujrah* or fees.

b. Legal Basis *Wakalah bil ujarah*

1) Al-Qur'an

The Word of God, Surah Al-Hashr 59:18, which says,

يَا أَيُّهَا الَّذِينَ آمَنُوا اتَّقُوا اللَّهَ وَلْتَنْظُرْ نَفْسٌ مَّا قَدَّمَتْ لِغَدٍ, وَاتَّقُوا اللَّهَ, إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ

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<sup>96</sup> Mardani, *Fiqh Ekonomi Syariah*..., hlm. 300.

“O you who believe! Fear God, and let every soul consider what it has forwarded for the morrow, and fear God. God is Aware of what you do”.<sup>97</sup>

The Word of Allah, Surah An-Nisa 4:9, which says,

وَلِيَخْشَ الَّذِينَ لَوْ تَرَكُوا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَافًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا

“Those who are concerned about the fate of their weak children, in case they leave them behind, should fear God, and speak appropriate words”.<sup>98</sup>

The Word of Allah, Surah Al-Taubah 9:60, which says,

أَمَّا الصَّدَقَاتُ لِلْفُقَرَاءِ وَالْمَسْكِينِ وَالْعَامِلِينَ عَلَيْهَا وَالْمُؤَلَّفَةِ قُلُوبُهُمْ وَفِي الرِّقَابِ وَالْغَارِمِينَ وَفِي سَبِيلِ اللَّهِ أَوْ بِنِ السَّبِيلِ, فَرِيضَةً مِّنَ اللَّهِ, وَاللَّهُ عَلِيمٌ حَكِيمٌ

“Charities are for the poor, and the destitute, and those who administer them, and for reconciling hearts, and for freeing slaves, and for those in debt, and in the path of God, and for the traveler in needan obligation from God. God is AllKnowing, Most Wise”.<sup>99</sup>

## 2) Hadith

Hadith narrated by Bukhari, which says,

حَدَّثَنَا عَلِيُّ بْنُ عَبْدِ اللَّهِ, حَدَّثَنَا سُفْيَانُ, حَدَّثَنَا شَيْبِ بْنِ عَرْقَدَةَ, قَالَ: سَمِعْتُ الْحَيَّ بْنَ يَسْحَدَةَ يُحَدِّثُنِي عَنْ عُرْوَةَ: أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَآلِهِ وَسَلَّمَ أَعْطَاهُ دِينَارًا يَشْتَرِي لَهُ بِهِ شَاةً: فَاشْتَرَى لَهُ بِهِ شَاتَيْنِ, فَبَاعَ إِحْدَاهُمَا بِدِينَارٍ, فَجَاءَ بِدِينَارٍ وَشَاةٍ, فَدَعَا لَهُ بِالْبَرَكَاتِ فِي بَيْعِهِ, وَكَانَ لَوْ اشْتَرَى التُّرَابَ لَرَبِحَ فِيهِ ( رواه البخاري,

“Ali bin Abdullah told us, Sufyan told us, Shabib bin Gharqadah told us, he said: I heard the people speak about 'Urwah, that the Prophet gave him one dinar to buy a goat for him; then with this money he bought two goats, then he sold one for one dinar. He returned home with one dinar and one goat. The Holy Prophet prayed for him with blessings in his trading. Even if 'Urwah bought land, he would be lucky ”.

<sup>97</sup> Talal Itani, *The Quran...*, hlm. 291

<sup>98</sup> Talal Itani, *The Quran...*, hlm 38

<sup>99</sup> Talal Itani, *The Quran...*, hlm. 96

The above hadith provides a reward for *Urwah* for representing the Prophet in trading away a goat. The above activity is called the *wakalah bil ujarah* contract.

### 3) Rules of Fiqh

The *fiqh* rule for this contract is that,

الأصلُ في المعامَلاتِ الإباحَةُ إلاَّ أن يَدُلَّ دَلِيلٌ عَلَى تَحْرِيمِهَا

“Basically, all forms of *muamalah* are permissible unless there is evidence that forbids it”<sup>100</sup>

### 4) Principles and Conditions

There are four principles of the *wakalah bil ujarah* contract, including:

- a) Representative (person who has the power of attorney),
- b) *Muwakkil* (power of attorney),
- c) *Muwakkal fih* (the represented object) and,
- d) *Şigat* (pronunciation of handover).<sup>101</sup>

The terms and conditions of the *wakalah bil ujarah* contract are ;

- a) A statement of consent and *qabul* must be stated by the parties to show their will in entering into a contract (*akad*),
- b) *Wakalah* is a binding contract and may not be canceled unilaterally,

<sup>100</sup> Ahmad Dzajuli, *Kaidah-Kaidah Fikih* (Jakarta: Prenada Media, 2019), hlm. 130.

<sup>101</sup> Indah Nuhyatia, “Penerapan dan Aplikasi Akad Wakalah pada Produk Jasa Bank Syariah”, *Jurnal Ekonomi dan Hukum Islam*, Vol. 3, No. 2, hlm. 104.

- c) A representative is a person with legal competence, can perform the tasks that he represents, and is a person who is given the mandate,
- d) *Muwakkil* is the legal owner who can act on something that is represented. *Mukallaf* or *mumayyiz* refers to children within certain limits, namely in things that are beneficial to them such as representing to receive grants, receiving alms and so on.
- e) The object or something that is represented must be clearly known, and is not against Islamic law.<sup>102</sup>

#### **D. Sharia Hospital Legal Basis and Sharia Hospital Operational Guidelines in accordance with DSNMUI Fatwa No. 107 / X / DSN-MUI / 2016**

Islamic jurists define the contract as “the relationship between consent and *kabul*, justified by *syara*”. Meanwhile, in the Sharia Economic Law Compilation (KHES), a contract is defined as an agreement between two or more parties to either take or not to take certain legal actions.<sup>103</sup> A contract is an agreement that is established by means of a *qabul* agreement between parties based on provisions that give rise to legal consequences on the object. This provision describes the legal subjects involved and the contract that will be used.

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<sup>102</sup> Anonim, *Fatwa DSN No. 10/DSN-MUI/XI/2008 tentang Wakalah* (Jakarta: DSN-MUI, 2008), hlm.

<sup>103</sup> Gemala Dewi, dkk, *Hukum Perikatan Islam di Indonesia* (Jakarta: Kencana Prenada MediaGroup, 2013), hlm 51.

1. The contract between the hospital and the health worker is the *ijarah* contract for health services, the hospital as the service user (*Musta'jir*), and the health worker as the service provider (*Ajir*). An *ijarah* contract is a contract of transfer of use rights over goods or services, through payment of rent or wages, without transfer of ownership.
2. The contract between the hospital and the patient is in the form of an *ijarah* contract between the hospital as the service provider (*Ajir*) and the patient as the service user (*Musta'jir*), in an effort to treat the patient's illness.
3. The contract between the hospital and the supplier of medical equipment and the supplier of laboratory equipment (hereinafter referred to as the supplier) can be in the form of:
  - a. *Ijarah* Agreement; Hospitals as tenants (*musta'jir*), and suppliers as renting parties (*mu'jir*);
  - b. *Ijarah mumtanhiyah bi al-tamlik* contract; a lease agreement that ends with the transfer of ownership of the leased property from *mu'jir* to *musta'jir*; The *Ijarah mumtanhiyah bi al-tamlik* contract is a combination of a sale and purchase contract, or rather a *sewayang* contract that ends with the ownership of the goods in the hands of the lessee. It is also the nature of this transfer of ownership that distinguishes it from ordinary *ijarah*.<sup>104</sup>
  - c. *Akad ba'i*; Hospitals as buyers (*musytarik*), and suppliers as sellers (*ba'i*);

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<sup>104</sup> Muhammad Syafii Antonio, *Bank Syariah...*, hlm. 102.



- d. *Muḍarābah* Agreement; Hospitals as managers (*muḍarib*), and suppliers as owners of capital (*shahib al-mal*); *Muḍarabah* is an agreement between the owner of the capital and the manager to be used to provide drug and laboratory supplies to patients through the manager where profits are shared between the owner and manager;
- e. *Musyārakah Mutanāqishah* agreement; Hospitals and managers pooled venture capital and the portion of the supplier's capital ownership decreased due to the gradual transfer of capital ownership to the hospital.
4. The contract between the hospital and the drug supplier can be in the form of :
- a. *Akad bā'i*; hospitals as buyers (*musytarik*), and drug suppliers as sellers (*bā'ī*), with the payment done either in cash (*naqdam*), installments (*taqsith*), or *ta'jil*; or
  - b. The *wakalah bi al-ujrah* contract; Hospitals as representatives, and drug suppliers as the power of attorney (*muwakkil*) to sell drugs to patients. *Akad* is used by the hospital (second party) as representatives of drug suppliers (first party) to exercise power to sell drugs to patients (third party). If the authority has exercised the power according to the agreement, the order belongs entirely to the first.
5. Service-related provisions. Service is an important factor, especially for companies engaged in services. Services that are determined by good management and executed in accordance with the provisions are regarded as a good quality service.

If the service is in accordance with Islamic sharia, then the management has to be a sharia management.<sup>105</sup>

- a. Hospitals and all interested parties are required to fulfill the rights and obligations of each party with their utmost respect. Rights and obligations are two reciprocal sides in a transaction. The rights of one party are the obligations of the other party, and vice versa, the obligations of one party become the rights of the other party. Both parties deal with each other and are recognized in Islamic law. Rights according to Islamic law are interests that exist in individuals or society, or both, which are recognized by sharia. Dealing with a person's rights is an obligation-which has to be respected by others. However, in general, the definition of rights is something that we receive, whereas an obligation is something that we must fulfill or carry out.<sup>106</sup>
- b. Hospitals are required to provide services in accordance with the Clinical Practice Guidelines (PPK), clinical pathways and/or service standards. Hospitals are required to fulfill several types of services in accordance with the minimum service standards stipulated in the Decree of the Minister of Health RI Number 129 of 2008.
- c. Hospitals are obliged to prioritize humanitarian aspects in providing health services according to patient needs, regardless of race, ethnicity and religion.

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<sup>105</sup> Sumadi, "Peran Manajemen Syariah Terhadap Peningkatan Kepuasan Pelanggan pada Rumah Sakit Islam di Kota Surakarta", *Jurnal Ilmiah Ekonomi Islam*, Vol 03, No. 02, 2017, hlm. 112.

<sup>106</sup> Gemala Dewi, *dkk, Hukum Perikatan Islam...*, hlm. 64.

- d. Hospitals must be committed to always being trustworthy, polite and friendly, and always striving to provide transparent and quality services. Hospitals are required to prioritize aspects of justice and reasonableness in calculating the costs that will be charged to patients. Aspects of justice and fairness include the hospital administration's ability to provide fair and equitable services to everyone at costs that are affordable to the community as well as providing quality services.<sup>107</sup> Patients in the hospital sometimes do not have the ability to pay for medical expenses, which results in receivables for the hospital and payables for the patient. Islamic Sharia regulates that debt is one of the obligations that must be completed by a person who is in debt. Hospitals need to have concern for the patient that fails to pay (whether alive, especially who have died), and does not have the ability to pay. The management mechanism for patients who cannot afford to pay is implemented on the recommendation of the sharia committee based on the sharia guidelines of the sharia supervisory board.<sup>108</sup>
- e. The hospital is obliged to provide services and religious spiritual consultation as needed for patient healing. Islam has taught about health services that

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<sup>107</sup> Anonim, *Undang-Undang Nomor 44 Tahun 2009 tentang Rumah Sakit* (Lembaran Negara Republik Indonesia Tahun 2009 Nomor 153, Tambahan Lembaran Negara Republik Indonesia Nomor 5072), Pasal 2.

<sup>108</sup> MUKISI, *Standar dan...*, hlm 74.

provide comprehensive services both bio-psycho-socio-cultural and spiritual for individuals and communities.<sup>109</sup>

- f. Patients and the person in charge of patients must comply with all rules and procedures that apply in the hospital.
- g. The hospital, the patient and the person in charge of the patient are obliged to exercise good morals.
- h. Hospitals are obliged to refrain from immoral acts, *risywah*, *zhulm* and other behaviors that contradict the sharia.
- i. Hospitals are required to establish a Sharia Supervisory Board (DPS). The Sharia Supervisory Board is appointed by the Owner based on the recommendation of DSN-MUI. DPS is responsible for supervising hospital operations based on sharia principles. The functions of the Sharia Supervisory Board include:
  - 1) Conducting supervision of hospital operations in accordance to sharia law,
  - 2) Reporting hospital services and operations from with regards to the sharia law to DSN-MUI,
  - 3) Issue a sharia opinion to answer questions or problems from the organization,

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<sup>109</sup> Sulistiadi W dan Rahyu S, "Potensi Penerapan Maqashid Syariah Dalam Rumah Sakit Syariah di Indonesia", *Proceeding pada Batusangkar Internasional Conference-1 Graduate Programme of Institut Agama Islam Negeri Batusangkar*. Batu sangkar. 15-16 Oktober 2016. hlm. 685.

- 4) Submit the formulation of problems that require discussion in sharia to MUI and DSN-MUI,
  - 5) Participate in the socialization and educational activities organized by the hospital for the public.
  - j. Hospitals are obliged to follow and refer to the fatwas of the Indonesian Ulema Council related to contemporary Islamic law issues in the field of medicine.
  - k. Hospitals are obliged to have guidelines regarding the procedures for worship that Muslim patients must perform (among other things related to the provisions on procedures for washing and praying for the sick).
  - l. Hospitals are required to have guidelines regarding hospital hygiene standards.
6. Provisions related to the use of drugs, food, beverages, cosmetics and consumer goods
- a. Hospitals are required to use medicines, food, drinks, cosmetics and consumer goods that have received a Halal certificate from the Indonesian Ulema Council (MUI);
  - b. If the drug used has not received a Halal certificate from the MUI, then it is permissible to use a drug that does not contain illegal elements;
  - c. In a forced condition (emergency), the use of drugs containing elements that are haram requires an informed consent procedure to be carried out.
7. Provisions regarding the placement, use and development of hospital funds

- a. Hospitals are required to use the services of a Sharia Financial Institution in the effort to provide hospitals, including banks, insurance, financial institutions, guarantee institutions and pension funds;
- b. Hospitals are required to manage fund portfolios and other types of assets in accordance with sharia principles;
- c. Hospitals may not develop funds for business activities and/or financial transactions that are contrary to sharia principles;
- d. Hospitals are required to develop and manage funds for *zakat*, alms and endowments (*infaq*).



**IAIN PURWOKERTO**

## CHAPTER III

### RESEARCH METHOD

Research method is a method or procedure used to find a solution to existing problems. The research method includes research tools and procedures. The research method guides the researcher in accordance with the proper research work sequence, from the beginning of the study to the end of the study.<sup>110</sup>

Research methods or scientific methods are procedures or steps taken in obtaining scientific or scientific knowledge. Therefore, the research method is a systematic way to organize science, whereas the research technique is a way to carry out research methods. The research method usually refers to the form of research.

#### A. Type of Research

This research type is a field research, including a qualitative research in which the researcher makes an observation of the phenomenon of a situation directly from the field in order to collect data for the purpose of this study,<sup>111</sup> especially the phenomenon at purwokerto Islamic hospital. There are five characteristics of a qualitative research. The first is natural setting, which means that in qualitative approach, the intent is to explore human behavior within the context of their natural occurrence.

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<sup>110</sup> Sudaryono, *Metodologi Penelitian*, (Depok: Rajawali Pers, 2018), hlm 69.

<sup>111</sup> Suharsimi Arikunto, *Prosedur Penelitian: Suatu Pendekatan Praktik* (Jakarta: Rineka Cipta, 2002), hlm. 83.

The second is I as data gathering instrument. These data include field notes from participants observations, notes from of transcriptions of interview with informants, and unobtrusive data such as artifact from the research site or record related to the social phenomena under investigation. The third is the inductive data analysis, which means that a qualitative researcher do not begin with null hypotheses to retain. The fourth is reflectivity. It is understood that the act of studying a social phenomenon influences the enactment of that phenomenon.<sup>112</sup>

Qualitative methods are called 'new methods' because of their recent popularity. It is also called the postpositivistic method because it is based on the philosophy of positivism. It is can also be called as an artistic method because the research process is more artistic, or the interpretative research method. Qualitative methods are used in research with objective natural conditions. Sampling in this study was purposive.

Qualitative research generally takes smaller and more samples which leads to research on processes rather than products and is usually limited to one case. The first step of an exploratory research is to analyze the existing studies in the subject area, and then transform potential issues into one defined problem to develop research objectives.<sup>113</sup>

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<sup>112</sup> J, Maos, Hatch, *Doing Qualitative Research in Education Settings* (State University in New York Prees, 2002), P. 1-2

<sup>113</sup> Louissse Kelly, "Teenagers Perceptions of Advertising in the Online Social Networking Environment : An Exploratory Study", *Thesis* (Queensland University of Technology, 2008), P. 48.



In this research I used qualitative descriptive research method. Descriptive research method is a form of research which focuses on problems in the form of current facts from a population which includes the assessment of attitudes or opinions towards individuals, organizations, circumstances, or procedures. Qualitative research method is a form of research that seeks to analyze social life by describing the social world from the point of view or interpretation of individuals (informants) in a natural setting.<sup>114</sup>

## **B. Determination of Research Locations**

The location of this research is in the Purwokerto Islamic Hospital which is located at Jl. H. Masyuri Rejasari No 39 Purwokerto Banyumas, Central Java, Indonesia, 53134.

## **C. Data Source**

There are two types of data that I used in this research. The first type is the primary data. Primary data can only be obtained from the original source or first taken directly from the original source, through appropriate sources and respondents in the study<sup>115</sup>. The primary data used in this research is the data that the author obtained from the Islamic Hospital Purwokerto, which include an in-depth interview on the implementations of the sharia principles at Purwokerto Islamic Hospital. The second primary data is the field observation notes taken at Purwokerto Islamic Hospital. I also used a draft of DSN-MUI fatwa no 107/DSN-MUI/X/2016 on the

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<sup>114</sup> Louissse Kelly, "Teenagers...", P. 91.

<sup>115</sup> Jonathan Sarwono, *Metode Penelitian Kuantitatif dan kualitatif* (Yogyakarta: Graha Ilmu, 2006), hlm. 123.

guidelines of Sharia Hospitals. The second data type is the secondary data. Secondary data is the data that is already available to be researched and can be obtained more easily and quickly. This data is used to support the primary data with regards to the research problems.<sup>116</sup> The secondary data used in this research is the data that the author gathered from various journals, scientific works and other elements related to this research. The author also used pictures, recorders and videotapes as documentation of the research process for the secondary data.

#### **D. Research Approach**

The approach taken by me is the Sociological Juridical Approach. The sociological legal approach is the identification and conceptualization of law in real life structures as real and functioning social entities. I want going directly to the object, knowing understanding the application of the principles of sharia in the administration of the Purwokerto Isam Hospital hospital, in particular in the management and patient services, as well as in the cooperation with other parties in the hospital.

#### **E. Determination of the Subjects and Objects of Research**

Research object contains research variables along with the characteristics of the elements to be studied, which include the research population and research sample. This section includes sampling. The object of research also contains the questions of 'what', 'who', and 'where'.

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<sup>116</sup> Jonathan Sarwono, *Metode...*,

## 1. Subject of Research

In this study, I used the purposive sampling technique as an informant retrieval technique. Purposive sampling is a technique of sampling data sources with certain considerations. In this particular development, for example, the person who is considered to know what we expect, or the manager of the premises would make it easier for researchers to explore the object or situation to be studied. In other words, sampling is taken based on research needs.

## 2. Object of Research

The object of research in this study is the implementation mechanism of the hospital in the Purwokerto Islamic Hospital which includes patient service, management, cooperation between parties in the Purwokerto Islamic Hospital, and the financial management system in the Purwokerto Islamic Hospital, with emphasis on any existing sharia principles. In particular, it is in accordance with the provisions of the MUI fatwa regarding guidelines for Sharia Hospitals

## **F. Data Collection Technique**

The data collection method is a method used by researchers to collect data. This method refers to something abstract, which cannot be manifested in an invisible object, but can only be displayed.<sup>117</sup> Data collection techniques are carried out with the triangulated or combined data, namely using various types of research data collection techniques in a combined and continuous manner. The techniques used by the author to fulfill the data for this study are:

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<sup>117</sup> Suharsini Arikunto, *Manajemen Penelitian*, (Jakarta: Rineka Cipta, 1998), hlm. 134.

## 1. Observation

Observation means that the researcher makes direct observations to the object of research to take a close look at the activities carried out. There are two types of observation, participatory observation and non-participatory observation. Participatory observation means that the researcher is directly involved in the activities that are being observed. Whereas non-participatory observation means that the researcher only acts as an observer.<sup>118</sup>

Observation is the process of gathering open-ended, immediate information by observing people and places at a research location.<sup>119</sup> Field observations are made directly by the author in order to finalize the results of research. Moreover, there are a lot of other observation types, but in this research, the researcher used the contribution observation which means that the researcher is present to observe the action but does not act together or participate.<sup>120</sup>

These observations were carried out by observing how the Purwokerto Islamic Hospital applied the concept of Sharia Hospitals, to the services and management provided by medical personnel to patients, as well as various activities within the Islamic Hospital based on Sharia Principles.

## 2. Interview

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<sup>118</sup> Sudaryono, *Metodologi Penelitian...*, hlm. 216.

<sup>119</sup> John W. Cresswell, *Educational Research: Planning, Conducting, Evaluating Quantitative and Qualitative Research*, (Boston: Addison Wesley, 2011), P. 213

<sup>120</sup> Sugiyono, *Metode Penelitian Pendidikan: Pendekatan Kuantitatif, Kualitatif, dan R&D*, (Bandung: Alfabeta, 2012), hlm. 312.

The interview is a method of collecting data that is used to obtain information directly from the source. Interviews were conducted orally in face-to-face individual meetings. By using the purposive sampling technique, the sample is determined deliberately by the researcher, based on certain criteria or considerations.<sup>121</sup>

The second technique is in-depth interview. The in-depth interview is a particular type of conversation or speech event used by the researcher to explore the informant's experience and interpretation.<sup>122</sup> The interview technique conducted by me was in the form of an unwritten interview and only limited to mere chat with the Purwokerto Islamic Hospital staff. This technique is also a data collection technique carried out by researchers for preliminary studies to identify the problems that must be examined, and this technique is also carried out by the author to obtain various data related to the objectives of this research.

The informant whose author asked for his participation was Br. Yusuf as the Public Relations Officer of Purwokerto Islamic Hospital and other parties relating to the needs of this research, including Mrs. Lisa from the Division of Nutritional Installation, Ms. Ajeng Kumalasari ~~in~~ from the Division of Pharmacy Installation, Mrs. Teguh from the Finance section of the Islamic Hospital of Purwokerto, Ms. Rini Indrian as the Head of the Service Quality Section of the

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<sup>121</sup> Sanapiah Faisal, *Format-Format Penelitian Sosial Dasar-Dasar dan Aplikasi*, (Jakarta: Rajawali Pers, 1996), hlm. 67.

<sup>122</sup> J, Maos, Hatch, "*Doing Qualitative...*", P. 72.

Purwokerto Islamic Hospital Service and Mr. H. Muchon from the Islamic Hospital Foundation.

### 3. Documentation

Documentation technique is a technique of collecting data through a record of events that have occurred, in which the document can be in the form of writing, drawing, or monumental works from another researcher. In this study, the documentation used by the author was in the form of pictures, photos, written documents and data sourced from Purwokerto Islamic Hospital and other supporting sources.<sup>123</sup>

The purpose of documentation is to obtain data directly from the research site, including relevant books, regulations, activity reports, photographs, documentary films, and any other relevant research data. Documents are records of events that have occurred.<sup>124</sup>

### G. Data Analysis Techniques

Data analysis is a process of organizing and sorting data into patterns, categories and basic units of description in order to identify themes and formulate work hypotheses as suggested by the data.<sup>125</sup>

The data analysis method used by me is a descriptive analysis of efforts to collect and compile existing data, then an analysis of the data is carried out.

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<sup>123</sup> Winarto Surachman, *Pengantar Penelitian Ilmiah: Dasar, Metode, Teknik* (Bandung: Tarsita, 1990), hlm. 139.

<sup>124</sup> Sudaryono, *Metodologi Penelitian...*, hlm. 219.

<sup>125</sup> Lexy J Moloeng, *Metode Penelitian Kualitatif...*, hlm. 280.

Descriptive method is the method used to search for elements, traits, properties, phenomena. This method begins with collecting data, analyzing data and interpreting it. The descriptive method in its implementation is carried out through surveys, case studies, comparative studies, studies of time and motion, behavior analysis, and documentary analysis.

I carried out the descriptive analysis by analyzing primary and secondary data sources regarding the study of fatwas, etc., concerning guidelines for the administration of sharia hospitals. Furthermore, the analysis conducted by the author in this study is a critical analysis where the source of the data is in such a way that moves from certain values understood by me. The data analysis technique in the research that the author carried out was also in the form of an inductive method, where conclusions were later drawn from the presented data.



**IAIN PURWOKERTO**

## CHAPTER IV

### ANALYSIS IMPLICATION OF APPLICATION OF DSN-MUI FATWA CONCERNING THE GUIDELINES OF SHARIA HOSPITAL TO THE PURWOKERTO ISLAMIC HOSPITAL

#### A. General Description of Purwokerto Islamic Hospital

##### 1. History of Purwokerto Islamic Hospital

Purwokerto Islamic Hospital is one of the few hospitals located in the Banyumas district. The exact address of the Islamic hospital is on Jalan H. Masyhuri Rejasari No. 39, Purwokerto. Its strategic position and proximity to downtown areas gives the Purwokerto Islamic Hospital some unique added value. This makes the Purwokerto Islamic Hospital become very easily accessed by vehicles. Because of the easy access, prospective patients can easily to go to the hospital to receive healthcare, especially those in the Banyumas, Central Java area.<sup>126</sup>

Purwokerto Islamic Hospital is not an independent institution, but instead a hospital under the auspices of the Purwokerto Islamic Hospital Foundation, also known as YASRI PURWOKERTO. The office of the Purwokerto Islamic Hospital Foundation is also in the same area as the address of the Purwokerto Islamic Hospital. In its history, the certificate of establishment of the Purwokerto Islamic Hospital was recorded as number 34 dated March 22<sup>nd</sup>, 1983 by the notary at that

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<sup>126</sup> Wawancara dengan Bpk. Muchon selaku Sekertaris Yayasan Rumah Sakit Islam Purwokerto pada 16 September 2020 pada pukul 10.37 wib



time, Soetardjo Soemoatmodjo. In the subsequent course, this notary deed has undergone several changes, such as in 1986 by notary Surjana Hadiwijaya, SH recorded as number 19 dated December 23<sup>rd</sup>, 1986 regarding the deed of amendment. In addition, the Purwokerto Islamic Hospital Foundation also collaborated with various notaries who took turns in taking care of the legality of various existing interests. Recorded to date, there have been 8 notaries involved with the Purwokerto Islamic Hospital Foundation in the interests of legality, and the most recent notary is Ari Purwaningsih, SH, M.Sc., M.Kn, no. 6 dated June 24<sup>th</sup>, 2019 regarding a statement of meeting decisions between the founders of the Islamic hospital foundation.<sup>127</sup>

In the implementation of health services at the Purwokerto Islamic Hospital which has an area of around 21,663 square meters, the Purwokerto Islamic Hospital employs a number of workers, specifically 14 people in the structural foundation of the Purwokerto Islamic Hospital (5 coaches, 6 administrators and 3 supervisors), The hospital has a total of 219 employees, with 178 permanent employments (male 76 and 102 female), and 41 contractual employments (15 male and 26 female).

The Purwokerto Islamic Hospital has recorded a number of legality licenses, including; PERSI permit No. 03/PERSI/REK/II/2010 on February 10<sup>th</sup>, 2010; business license number 503/600/100/86 dated October 1986; building

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<sup>127</sup> Wawancara pada bpk. Mucshon...

permits number 503 662. 1/354/199/51 dated June 23<sup>rd</sup>, 1986, environmental permit number 660.1.3562/2018 dated August 31<sup>st</sup>, 2018 (extension), operational permit from the Indonesian government dated September 16<sup>th</sup>, 2016, location permit from the Indonesian government on July 22<sup>nd</sup>, 2020, and the NIB number 91220105242859 dated February 25<sup>th</sup>, 2019.

The philosophy of the Purwokerto Islamic hospital is *واذ مر ضت فهو يشفي* which means "and when I am sick, He is the one who heals me" This philosophy implies that everything that humans try to do is merely an event, and everything that happens in this world is actually due to the will of Allah, the God of the universe, including when humans, as creatures of Allah, fall ill. What can be done by the Purwokerto Islamic Hospital is to give efforts to heal those who are sick by the will of Allah SWT. In addition, it is hoped that everyone who can understand this philosophy will also emphasize that it is only in Allah that we rely and hope for everything.

## IAIN PURWOKERTO

Purwokerto Islamic Hospital has a vision to be "the hospital of choice for the community centered on emphasizing MUI values and patient safety". Its missions are "to provide excellent health services that are comprehensive, catered to patients' needs, and not discriminatory; effective and efficient asset management by synergizing the welfare of human resources, organizations,

science and technology; establish and develop networks with both government and private agencies and; to carry out the function of education and training for relevant internal and external parties. The Purwokerto Islamic Hospital also has a goal; to carry out charitable business in the health sector and other charities related to education in accordance with Islamic teachings of goodwill to humanity in helping government efforts in the health sector to improve and maintain the level of public health.

Purwokerto Islamic Hospital is a Muhammadiyah charity business that was established by the regional leadership of the Banyumas Regency Muhammadiyah based on the Muhammadiyah Banyumas Regional Leadership letter No. A-1/002/1983 dated 11 Jumadā al-'Ūlā 1403 H, which coincides with February 3<sup>rd</sup>, 1983 AD, regarding the appointment of the founding body of the Islamic hospital foundation (YASRI); the Muhammadiyah Banyumas Regional Leadership letter No. A-6/004/1985 dated January 29, 1985 regarding the proposal for the ratification of the Islamic hospital foundation (YASRI) to the Muhammadiyah Central Executive; the Muhammadiyah Banyumas Central Executive letter No. 06/PP/1985 dated 1 Rajab 1405 H, which coincides with March 23<sup>rd</sup>, 1983 AD concerning the ratification of the Islamic hospital foundation (YASRI) which is affiliated with Muhammadiyah.

The Purwokerto Islamic Hospital officially began its operations on Kliwon Friday, 1 Muharram 1407, or September 5<sup>th</sup>, 1986. The inauguration was set to be carried out by Mr. dr. H. Koesnandi as the chairman of the Central PKU assembly and the chairman of YASRI Jakarta. However, because he was senile, he was replaced by dr. H. Soegiato As.<sup>128</sup>

## 2. Description of Hospital Operation in Purwokerto Islamic Hospital

As a health institution, Purwokerto Islamic Hospital runs its operations by involving various parties and elements. In this implementation, Purwokerto Islamic Hospital always tries to focus not only on the elements of hospital administration in accordance with existing conventional rules, but also to focus on various sharia principles. The spirit of organizing with the principles of sharia is in line with the name carried by the Islamic hospital where the principles of Islam (sharia) are considered as the basis of the Purwokerto Islamic Hospital.

To fulfill the need of each patient and maximum services, Purwokerto Islamic Hospital it has some instrument as:

- a. Purwokerto Islamic Hospital Services Division. This service field oversees the various types of services available at the Puwokerto Islamic Hospital. This section also manages various service installations and regulates quality

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<sup>128</sup> Anonym, *Berkas Yayasan Rumah Sakit Islam Purwokerto tentang Sejarah Rumah Sakit Islam Purwokerto*. 2020

standards at the Purwokerto Islamic Hospital. The service department is under the leadership of Dr. Rena Susilo.

1) Service Quality Section and Case Manager. This section regulates various control increases and standardization of service quality in Purwokerto Islamic Hospital. This section under the leadership of Ns. Rini Indriani, S.Kep.

2) Nursing Section. This section regulates the various mechanisms of patient care, operating under the leadership of Ns. Isni Maftuhah, S.Kep.

3) Section of Medical and Support Services, under the leadership of Dr. Rika Retnoningsih

b. Purwokerto Islamic Hospital Installation Services. Purwokerto Islamic Hospital has a variety of services that support the optimal administration of health institutions such as:

1) Outpatient Installation. As a hospital with a comprehensive accreditation, having inpatient and outpatient installations is a mandatory requirement. The Purwokerto Islamic Hospital has the outpatient installation service which is under the leadership of Dr. Farah Amiria

2) Inpatient Installation. In order to treat patients that require hospitalization and medical treatment, the Purwokerto Islamic Hospital also provides inpatient installation services under the leadership of Mudrikah, S.Kep.

- 3) Emergency room. Purwokerto Islamic Hospital also has emergency room services for patients who immediate or emergency treatment. This installation is under the leadership of Dr. Hidayat Kusugihaerso W., Sp.OT
- 4) Pharmacy Installation. To treat patients with pharmaceutical needs, the Purwokerto Islamic Hospital also provides a pharmacy installation service led by Ajeng Emma K., S.Farm., Apt.
- 5) Nutrition Installation. The nutrition installation provides various nutritional intake needs for inpatients. The nutritional installation of Purwokerto Islamic Hospital is led by Analisca WS, A.Md. Gz.
- 6) Laboratory Installation and Blood Bank. The laboratory installation and blood bank of the Purwokerto Islamic Hospital is led by Dr. Dharma Koosgiarto, Sp.PK.
- 7) Radiology Installation. The Radiology Installation of the Purwokerto Islamic Hospital is led by dr. Wiyaja Hadi, Sp, Rad.
- 8) Central Surgical Installation. The central surgical installation is a facility owned by the Purwokerto Islamic Hospital to perform surgical operations on patients. This installation is under the supervision of Dr. Yuhantoro, Sp.B.
- 9) Installation of anesthesia and intensive care. Installation of anesthesia and intensive care at Purwokerto Islamic Hospital is under the supervision of Dr. Susiyadi, Sp. An.

- 10) Medical support installation (Physiotherapy and Hemodialysis). The medical support installation provides a variety of medical support tools and consultation. This installation at the Purwokerto Islamic Hospital is operated by Dr. Erri Wulandari.
- c. Resource Administration Section. This section is in charge of various administrative affairs and resources of the Purwokerto Islamic Hospital. This section is led by Hasim Achmad, S.Kep
- 1) General Administration and Human Resources Section. This section is led by Hasan Pranoto, A.Md. Kep.
  - 2) Installation of maintenance of hospital infrastructure and facilities. This section is led by Darwoto.
  - 3) Installation of Medical Records. This section is led by Dwi Lestari, A.Md.RMIK.
  - 4) Finance and Accounting Section. This part is led by Teguh Wahyu Setiani.
  - 5) Environmental Sanitation Installation. This section is led by Mardi Teguh, A.Md.KL.
  - 6) Procurement section. This section is led by Karmo, A.Md.Kep.

Purwokerto Islamic Hospital has a variety of services that support the implementation of health institutions. Starting from various consultations and infrastructure, qualified resources, and various hospital management mechanisms.

In for They are carried out to operate the hospital in a way that can maximize each services.

## **B. Analysis of the Implication and Application of DSN-MUI Fatwa Concerning the Guidelines of Sharia Hospital at the Purwokerto Islamic Hospital.**

### **1. Effectiveness of Implementing the DSN-MUI Fatwa on the Purwokerto Islamic Hospital**

#### **a. Legal Factors**

As a health institution, hospital has various underlying legal rules, such as the licensing requirements for establishing the hospital, the numerous requirements mandatory to meet the hospital criteria, and so on. These existing regulations exist to support and strengthen the legal institution with legal standing. This will affect the capacity and legitimacy of the hospital itself. One of the rules that apply in Indonesia to regulate hospitals is stipulated in the constitution. The Hospital Law constitutes various rules and legal principles that underlie various affairs of a hospital as a legally protected institution. The Hospital Law is regulated in Act Number 44 of 2009 concerning Hospitals.

At the Purwokerto Islamic Hospital. Legal regulations regarding hospital administration, both in general and in accordance with sharia principles, have been used as guidelines as much as possible and harmonized with their various implementations, although the Purwokerto Islamic Hospital admits that they cannot be fully implemented due to their limitations.



Purwokerto Islamic Hospital acknowledges the rules regarding hospital housing law as important guidelines and references. Furthermore, each existing regulation is applied into various internal rules carried out at the Purwokerto Islamic Hospital. Rules regarding sharia principles are also very much considered in the Purwokerto Islamic Hospital in accordance with the name of this institute.

This law is widely recognized and considered important to be implemented at the Purwokerto Islamic Hospital. However, recognized or not, according to the researches that have been carried out on this topic, the rules regarding sharia hospital have not been properly implemented. In fact, the understanding of the law has not been fully enforced by the Purwokerto Islamic Hospital. Furthermore, if the rules regarding sharia hospital are fully implemented, there will be internal hospital rules that better reflect the hospital's compliance with existing sharia principles, and in this case in accordance with the guidelines of sharia hospitals, namely fatwa DSN-MUI no 107/DSN-MUI/2016 concerning sharia hospitals.<sup>129</sup>

#### b. Law Enforcement Factors

In the Effectiveness of Application of a rule of Law, Law Enforcement Factors have a strong influence and can reflect the extent to which a law can be optimally applied. This law enforcement factor can be an institution or agency

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<sup>129</sup> Wawancara pada Mas Yusuf selaku bagian Humas dan Sumber Daya Insani Rumah Sakit Islam Purwokerto pada 5 September 2020, pukul 11.15 WIB

that creates the rule of law, or it can also be an institution that becomes an element of law enforcement. This factor determines the mechanism of law enforcement and the implications of the stipulation of legal rules in an area or place. Furthermore, the legal rules regarding the application of sharia principles in hospital administration have been regulated in Fatwa DSN-MUI no. 107 concerning Sharia hospital. This rule was made by the DSN-MUI to be used as a benchmark for hospital operation and organization based on sharia principles.

In reality, the rules made by DSN-MUI have become the rules that underlie many sharia hospital operations in various regions, meaning that it can be said that the application of this fatwa has a very dynamic role in the hospital sector, especially those that try to implement sharia principles. However, on a de jure basis, all the rules contained in the guidelines for the operation of sharia hospitals have not been fully followed due to various conditions in the field.

This was observed by the author at the Islamic Hospital in Purwokerto for the purpose of this research. Even though all the principles related to sharia were optimally implemented in the operation of the Purwokerto Islamic hospital, the efforts made were not fully in accordance with the rules stipulated in the DSN-MUI fatwa regarding sharia hospitals. The researcher gathered some information from an interview with Mrs. Rini regarding the quality of care in Purwokerto Islamic Hospital. Mrs. Rini explained that the efforts made to improve the quality of services at the Islamic Hospital in Purwokerto had

been done as much as possible. This effort also involved various elements such as the suitability of certain legal rules regarding hospital housing, input from external parties such as patients, or in the form of an evaluation on each field in the internal department of Purwokerto Islamic Hospital. Mrs. Rini explained that the decision-making regarding the quality of service can also be improved by improving the quality of the internal resources of the hospital.<sup>130</sup>

I also interviewed Mr. Yusuf, from the education and training sector. He also explained that the efforts to improve the quality of the resources available at the Purwokerto Islamic Hospital had also been carried out. This is to ensure that each hospital operation can run smoothly, while also focusing on the principles of sharia. Supervision of every implementation of sharia principles was routinely carried out, even at the structural level of the Purwokerto Islamic Hospital. There is an internal supervisory unit that functions as the internal audit at the Purwokerto Islamic Hospital. This Internal Supervisory Unit includes several figures in charge of providing internal assessments for the Purwokerto Islamic Hospital. This internal supervisory unit also focuses on the implementation of sharia principles in various elements of the Purwokerto Islamic Hospital.<sup>131</sup>

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<sup>130</sup> Wawancara pada Mba Rini selaku bagian Mutu di Rumah Sakit Islam Purwokerto pada 9 September 2020, pukul 13.57 wib

<sup>131</sup> Wawancara pada mas Yusuf...

This was also the subject of observation for the researcher. In terms of the implementation of the fatwa and MUI, there are elements that oversees the internal performance of the hospital, especially in the line of implementing sharia principles. This task is usually performed by the hospital's Sharia Supervisory Board. However, the Purwokerto Islamic Hospital did not have this board in place, as explained by br. Yusuf. Instead, this task is carried out by an internal supervisory unit. Institutionally and structurally, this internal supervisory unit is much different from the supervisory board commonly found in sharia hospitals. But, in principle, the essence of the task is almost the same.

If we look at the second factor, the Purwokerto Islamic Hospital cannot be said to have been able to organize an Islamic hospital that fully implements sharia principles. This is because, if the DSN-MUI fatwa no. 107 regarding sharia principles is implemented thoroughly, then must have the Sharia Supervisory Board in place.

c. Supporting Facility Factors

Supporting infrastructure is the third relevant factor, according to Sajipto Raharjo, in discussing the effectiveness of law. The effectiveness of the application of a law also depends on instruments such as the facilities that are made in accordance with the conditions and objectives of a legal rule. This instrument can also facilitate the implementation of legal regulations in an area. Because on the contrary, it could be that the existing legal rules have been

supported by law enforcement factors, but if the existing facilities are inadequate, the reflected legal targets will also be reduced and ineffective. Purwokerto Islamic Hospital also acknowledged this. By referring to their belief in serving each patient as good as possible without discrimination, the hospital aims to give a good impression and satisfaction for every patient who receives the health services provided.

Purwokerto Islamic Hospital also tries to provide optimal facilities, infrastructure, or other instruments to improve health services to fulfill patient needs. This is also the subject of focus for the Purwokerto Islamic Hospital in terms of sharia principles. Various facilities available at the Islamic hospital Purwokerto can also support the implementation of the sharia principles in accordance with the DSN-MUI fatwa. This provision is also a positive action that answers the requirements of sharia-based health services for every patient. Based on this description, there are several notable observations that the researcher had gathered from the hospital.

First, observations regarding halal and healthy dishes served at the Purwokerto Islamic Hospital. Regarding health service efforts, they are not only limited to nursing services, doctors, or medical treatment. Services regarding healthy intake in accordance with patient needs and Halal requirements are also important factors. Purwokerto Islamic Hospital also tries its best to serve the healthiest food available to the patients in accordance with the nutritional

adequacy rate and in accordance with various sharia principles. This was explained by the head of the nutrition department in the Purwokerto Islamic Hospital. He explained that the efforts to provide healthy and halal food are important and fundamental in completing the hospital's duties as a health institution. He continued to explain that the hospital also focused on the various kinds of food that were served. Before serving, the nutritionist at the Purwokerto Islamic Hospital also checked on various other things related with the provision of available food, in order to guarantee a good and lawful spending product. Purwokerto Islamic Hospital collaborates with foodstuff suppliers that can be accounted for guaranteed quality. This cooperation is also intended to maintain the supply of food ingredients. Furthermore, the materials are processed meticulously by not only paying attention to the needs of the patient, but also paying attention to aspects of cleanliness, good procedures, and good fittings. He explained that this is carried out to create an atmosphere in accordance with the MUI's fatwa regulations regarding sharia hospitals, specifically the food sector. Although the implementation has not yet been optimal, but the efforts made have been tried as good as possible. The hospital has tried various supporting elements such as a daily menu, competent chefs, and the best ingredients. In fact, in the cooking process, some workers are neatly arranged in the most manageable manner so that the division of tasks can result in a good and focused teamwork. Based on several observations, the

researcher deemed the condition of the kitchen and the various existing facilities to be very good.<sup>132</sup>

Second, in addition to nutrition installations, efforts were also carried out in the pharmaceutical installation at the Islamic Hospital in Purwokerto, Mrs. Ajeng as the head of the pharmaceutical installation said that the Purwokerto Islamic Hospital had given its best efforts to implement various aspects that complies with sharia principles, including the various incoming drug supplies. The hospital gave much importance to the sharia principles in building the infrastructure to provide the best service to every patient receiving the health services.<sup>133</sup> The Purwokerto Islamic Hospital has implemented a cooperation mechanism by working with several sharia financial institutions to carry out hospital administration based on sharia principles and not contradicting other positive laws even though it has not yet been optimally enforced in accordance with what is in the provisions of the DSN fatwa.<sup>134</sup>

Furthermore, the existing facilities at the Purwokerto Islamic Hospital are generally sufficient to support the implementation of sharia principles in the operation of the hospital. The provision of Masjid as a praying facility, the recitation of Al-Qur'an, and provision of studies are certainly few of the visible

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<sup>132</sup> Wawancara pada Ibu. Analisca selaku bagian Instalasi Gizi Rumah Sakit Islam Purwokerto pada 4 September 2020, pukul 11.35 WIB

<sup>133</sup> Wawancara dengan Mba Ajeng bagian instalasi Farmasi Rumah Sakit Islam Purwokerto pada 5 September 2020, pukul 13.03 WIB

<sup>134</sup> Wawancara pada Ibu Teguh bagian Keuangann Rumah Sakit Islam Purwokerto pada 8 September 2020, pukul 09.32 WIB

ones. Besides that, the separation between male and female patient rooms is also something that shows the extent to which the hospital tries to organize the hospital administration with sharia principles. The separations is also based on the considerations of patients' comfort. However, according to Mr. Yusuf, this separation has not been fully achieved, as the separation of the male and female employee offices has not been fully implemented. In fact, if we look at the existing rules, it is unclear whether it is necessary to separate male and female employees' offices.

#### d. Community Factor

The community factor mentioned in this study refers to the community around the Purwokerto Islamic Hospital which runs the hospital. This factor, according to what the researcher has found, is quite supportive as the community around the Purwokerto Islamic Hospital is predominantly Muslim. Purwokerto Islamic hospital workers are also all Muslim. In fact, the mechanism for employee recruitment includes a religion-based test. This is related to the effort to filter human resource of the Purwokerto Islamic Hospital, so that it is not only capable of being competent hospital workers, but can also reflect the Islamic values of being devout and responsible.

#### e. Cultural Factor



This factor is certainly in line with the environmental conditions at the Purwokerto Islamic Hospital, in which the culture here refers to the culture that adheres to the principles of sharia. This is a common thing in the Purwokerto Islamic Hospital and according to what the researcher found during the observation, everything that usually happens in sharia hospitals does not contradict sharia principles.

## 2. Implications of the Application of the DSN-MUI Fatwa on Sharia Hospitals in the Purwokerto Islamic Hospital.

Compliance with this fatwa can be illustrated by measuring the effectiveness of the Purwokerto Islamic hospital in carrying out sharia administration. Furthermore, this benchmark will later be used to improve every process that has been and will be carried out comprehensively. In general, the Purwokerto Islamic Hospital has been in accordance with what the author found while conducting research at the Purwokerto Islamic Hospital, in that the hospital has not yet been able to fully implement sharia principles in operating the hospital. This is evidenced by various instruments that are not yet formed or in place at the Purwokerto Islamic Hospital. However, it does not mean that the Purwokerto Islamic Hospital does not completely adhere to its sharia principles.

I arrived to this conclusion by conducting observations and interviews with several informants from the Purwokerto Islamic Hospital. Although the DSN-MUI fatwa regarding guidelines for sharia hospitals has not yet been fully

enforced, but some sharia principles have been gradually applied, with hope that a comprehensive implementation is possible in the future.

The full application of the DSN-MUI fatwa regarding sharia hospitals will certainly provide various implications that will follow. This implication is more than the achievement of sharia hospitals in administering sharia principles. In the following, the researcher presents some notes which hopefully can improve the hospital administration in complying with sharia principles in the Purwokerto Islamic Hospital.

a. Contract between parties at the Purwokerto Islamic Hospital

In accordance with the provisions of the DSN-MUI fatwa regarding the guidelines for sharia hospitals, the most basic and very relevant provision that can be focused on is the provision of contracts. In the Purwokerto Islamic Hospital, the provision of contracts has not been carried out in accordance with the rules of the DSN-MUI fatwa. However, in principle, the Purwokerto Islamic Hospital has been striving to carry out transactions in accordance with sharia law. The agreement made at the Purwokerto Islamic Hospital once it has fully implemented the DSN-MUI fatwa is as follows:

- 1) *Ijārah* contract. The *ijārah* contract is carried out between the hospital and the patient, where the hospital acts as the health service provider and the patient as the service recipient that provides wages or *ujrah* to the hospital. This is commonly known as hospital handling fee. A Hospital who provides

the services to participate in the administration of a hospital in accordance with sharia principles at the hospital.

- 2) *Ijārah Muntahiyyah bi al-Tamlīk* contract. This contract is a lease agreement between one party and another party which concludes in the transfer of ownership. Islamic hospitals certainly require a variety of medical or non-medical equipment, so the hospital will carry out this contract with the equipment supplier at an agreed price. The Islamic hospital will make payments in stages with an agreement to rent the required equipment, but after arriving at the agreed price and a certain period of time, it is agreed that the ownership of the equipment is transferred to the Purwokerto Islamic Hospital.
- 3) The *bā'i* contract. The contract between the equipment supplier and the hospital can also be done in a *bā'i* contract where the Purwokerto Islamic Hospital acts as the buyer and the supplier acts as the seller. Goods that are traded with this contract include the equipment required to operate a hospital. This contract can also be carried out by Islamic hospitals with suppliers of drugs or pharmaceutical equipment. This contract can be made when the hospital purchases medicines or other supporting tools from the supplier. Hospitals also conduct these transactions with patients who buy drugs at pharmaceutical installations.

- 4) *Muḍārabah* contract. The Islamic hospital can also carry out this contract with equipment suppliers. The hospital acts as the *muḍarib*, or the investors, while the suppliers provide medical and pharmaceutical equipment. Purwokerto Islamic Hospitals as managers (*muḍarib*), and suppliers as owners of capital (*ṣahib al-mal*); *Muḍarabah* is an agreement between the owner of the capital and the manager to be used to provide drug and laboratory supplies to patients through the manager where profits are shared between the owner and manager.
- 5) *Musyārakah Mutanāqishah* contract. This contract is carried out by the investor and the manager by providing the same capital. But, over time, ownership is transferred to one party gradually. Islamic hospitals always manage to pool capital with investors for sharia hospital operations. However, over time the amount of capital between the hospital and the supplier will change and the full amount of assets owned will be transferred to the hospital. Purwokerto Islamic Hospitals and managers pooled venture capital and the portion of the supplier's capital ownership decreased due to the gradual transfer of capital ownership to the hospital.
- 6) The *Wakalah bil Ujrah* contract. This is a contract where one party represents another party with a reward or *ujrah* from one party to another with a predetermined mutual agreement. This contract is carried out with an Islamic hospital as the party that represents the sale of pharmaceutical

products to patients in need. In return, the hospital will receive *ujrah* from the owner of the pharmaceutical product. This contract is also carried out by Islamic hospitals with practicing doctors at the Purwokerto Islamic Hospital, provided that the Islamic hospital provides services on behalf of each doctor for administrative purposes, such as payment for practical services and others. In exchange for the services provided by each doctor for the patient, the hospital can provide feedback or other forms of agreement.

b. Improved and More Integrated Services

Purwokerto Islamic Hospital has to provide better service, which reflects the hospital's willingness and capability to uphold Islamic principles within its services in accordance with the provisions of the MUI fatwa regarding guidelines for sharia hospitals. Purwokerto Islamic Hospital and all whole relevant stakeholders have to carry out each of their responsibilities in the operation of a respectable Islamic hospital.

The Purwokerto Islamic Hospital has to be able to provide excellent service while staying within the laws applied in Indonesia. Islamic hospitals should be aware of the humanitarian aspects in carrying out their services to the patients, including providing them without discrimination.

Transparency should also be a significant consideration for the Purwokerto Islamic Hospital. The hospital should also consider providing spiritual consultation to fulfill the needs of its patients. The employees of the

hospital should also display polite and courteous attitudes as well as good manners that reflect *akhlakul karimah* in carrying out health services at the Purwokerto Islamic Hospital.

On the other hand, it also needs to be noted that the hospital should avoid all forms of immorality, *dolim*, *risywah*, and any other actions that contradicts the sharia principles and the DNS-MUI fatwa. One thing that the hospital can do to avoid this is to implement ordinances of worship to be carried out by every element of the hospital as well as the patients. Improving hygiene standards is also needed to complement the improvement of service quality at the Purwokerto Islamic Hospital.

- c. Provisions related to the use of drugs and food, cosmetics and consumer goods.

The Purwokerto Islamic Hospital also has to be able to meet the requirements of medicines, foods, beverages, cosmetics, and consumer goods while also confirming their halal status. In complying with the sharia principles and the DSN-MUI fatwa, the hospital is required to use medications, drugs, and consumer goods which are certified as halal by the DSN-MUI. If the use of goods that are not confirmed to be halal is required in emergency or urgent conditions, then an informed consent from the patients is required.

- d. Provisions regarding cooperation in Purwokerto Islamic Hospital in managing sources of funds or finance

Purwokerto Islamic Hospital shall use the services of agency finances based on sharia principles in running the hospital operations, including the bank, insurance service, financial institutions, loan institutions, and pension funds. Furthermore, the hospital also has to manage all forms of portfolio and assets owned by the hospital in accordance with the principles of sharia. The Purwokerto Islamic hospital is not allowed to manage business funds, transactions, and finances in a manner that contradicts the principles of sharia.

The Purwokerto Islamic Hospital must be able to manage zakat, waqf, and alms funds as optimal as possible in accordance with the values of Islamic teachings or in accordance with sharia principles in order to develop the useful values in the administration of sharia hospitals.

In carrying out and organizing all forms of administration of a sharia hospital, the Purwokerto Islamic Hospital has to establish a sharia supervisory board (DPS). This sharia supervisory board consists of experts in the knowledge of sharia principles, especially in the administration of sharia hospitals. A Sharia Supervisory Board is mandatory in order to comply with the regulations regarding the implementation of sharia principles. The DPS must be able to supervise the standard of instrument certification in the sharia hospital, as well as the minimum standards and mandatory sharia indicators that have been set by MUKISI and DSN-MUI fatwa regarding guidelines for sharia hospitals so that they are always implemented properly.

In forming the DPS, the hospital can seek recommendation from a panel of scholars in the provincial and national level to earn a DSN-MUI certification. The DPS is then responsible in supervising the management of finances and contracts of the hospital as well as other aspects such as services, medicines and drugs, foods and beverages, and others.





## CHAPTER V

### CLOSING

#### A. Conclusion

The conclusions from this research regarding the Implications of implementing the DSN-MUI fatwa on Islamic hospitals at the Purwokerto Islamic Hospital are as follows:

1. The administration of the Purwokerto Islamic Hospital is a series of mechanisms that are not only oriented towards meeting the needs of the community for health services, but also an effort made to provide wider benefits to the community in the form of preventive services, spiritual guidance services for patients or other things that are always stick to the principles of sharia. The administration that has been carried out has not fully implemented the provisions contained in the DSN-MUI fatwa concerning sharia hospital guidelines. Even so, all the management mechanisms that have been implemented have been carried out as much as possible by the Purwokerto Islamic Hospital to provide the best possible service. Various factors of the effectiveness of the implementation of a sharia hospital in the Purwokerto Islamic hospital have not been able to fully support the implementation of a sharia hospital in accordance with the provisions of the DSN-MUI fatwa regarding the guidelines for sharia hospitals.

2. The Purwokerto Islamic Hospital has implemented a cooperation mechanism by working with several sharia financial institutions to carry out hospital administration based on sharia principles and not contradicting other positive laws even though it has not yet been optimally enforced in accordance with what is in the provisions of the DSN fatwa. Improvements in various aspects must be carried out on a broader scale in the operation of the sharia hospital in the Purwokerto Islamic Hospital, and evaluation efforts must continue to be comprehensive. Efforts to supervise the existing administration must also be carried out by parties such as the Sharia Supervisory Board of the Purwokerto Islamic Hospital. There is also a point of emphasis in the procurement of medicines and food that are certified as halal by MUI. This will guarantee every product used in Purwokerto Islamic Hospital. The use of other goods that contain elements that are haram is permitted with certain urgent or emergency exceptions. Every party with an interest in running a hospital at the Purwokerto Islamic Hospital must be able to provide various fulfillments of their rights and obligations to one another by adhering to the existing sharia principles.

### **B. Suggestions**

In this study, the researcher wishes to provide several suggestions in order to improve the mechanism of sharia hospital administration in Purwokerto Islamic Hospital, which are as follows:

1. Hospitals, especially sharia hospital foundations, must be able to meet the sharia hospital guidelines stipulated in the DSN-MUI fatwa which is considered as a benchmark and complied with all legal provisions in the administration of sharia hospitals.
2. The DSN-MUI fatwa concerning sharia hospitals has to be urgently implemented by the hospital and various parties involved in the administration of sharia-based hospitals.
3. The contract between the Purwokerto Islamic hospitals and the stakeholders interested in organizing a Sharia hospital must be enforced in order to realize the administration of Islamic hospitals in Purwokerto Islamic hospitals.
4. The provision of various supporting instruments or factors by the Purwokerto Islamic Hospital needs to be addressed and further improved in order to develop a high-level of compliance of sharia principles in the Purwokerto Islamic Hospital.
5. Provision of a sharia supervisory board in every hospital, especially sharia hospitals is required to supervise the administration of sharia hospitals.
6. The DSN-MUI needs to socialize the community, especially the hospital management

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