



## Reevaluating Ali Gomaa's Fatwa on Bank Interest: A Detailed *Ushul Fiqh* Analysis

| Article                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Abstract                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
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| <p><b>Author</b><br/>Maksalmina</p> <p>Universitas Islam Negeri Profesor Kiai<br/>Haji Saifuddin Zuhri Purwokerto</p> <p><b>Corresponding Author:</b><br/>maksalminamr@gmail.com</p> <p><b>Data:</b><br/>Submitted: 30-09-2024;<br/>Revision: 07-11-2024;<br/>Accepted : 08-11-2024;<br/>Published: 11-11-2024</p> <p><b>DOI:</b><br/>DOI: <a href="https://doi.org/10.56593/khuluqiyya.v6i2.136">https://doi.org/10.56593/khuluqiyya.v6i2.136</a></p> <p><b>Keywords:</b><br/>Ali Gomaa's Fatwa, Bank Interest,<br/>Ushul Fiqh Analysis.</p> | <p>This paper aims to reexamine Ali Gomaa's ijihad methodology regarding bank interest and his paradigm of thinking. Bank interest is declared usury by the majority of clerics because it is considered additional within. According to Ali Gomaa, the addition to bank interest is not considered as usury, because it is a profit from customer investments managed by the bank. This study uses qualitative method with a descriptive approach. The result of this study indicate that Gomaa's ijihad methodology on the fatwa of bank interest is a combination of several methods, namely bayani (studying verses and hadiths related to bank interest) then studying and selecting the opinions of previous scholars who permitted bank interest (intiqā'i) and determining the halalness of bank interest by considering the principle of jalb al-mashlahah (istishlahi). The al-maslahah is understood from Gomaa's paradigm that the nature of a bank as an intermediary institution that functions to invest money where the capital owner (customer) also receives the results of the profit and the bank is a financial institution that can control the community in it.</p> |

### Introduction

Bank interest can be interpreted as a reward given by the bank to customers who buy or sell their products. Interest is also an amount paid or an additional amount paid for the use of capital. For example, this amount is expressed in a capital ratio or a percentage related to it, which is often called the capital rate. Scholars disagree about categorizing bank interest into usury. Some scholars state that bank interest is the same as usury, so it is haram. But some scholars call it non-usury. If it is classified as usury, then Muslims should not transact or deal with banks that practice interest because usury is prohibited in the Qur'an.<sup>1</sup>

Abdullah Saed stated that there are two opinions regarding usury, the first stating that usury is all excess of the principal value that is lent. While the second opinion is that the prohibition of

<sup>1</sup> Dadang Abdul Qadir, "Anatomi Keabsahan Bunga Bank Dalam Perspektif Teori Limit Muhammad Syahrûr," *Asy-Syari'ah* 16, no. 1 (2014), <https://doi.org/10.15575/as.v16i1.628>.

usury is related to the element of exploitation, which economically has a very detrimental impact on society. This element of exploitation is likely to be found in bank interest, which then there is an opinion that bank interest is forbidden. Another opinion about bank interest is as stated by A. Hasan quoted by Hendi Suhendi that bank interest as in this country is not usury that is forbidden, with the argument that in bank interest it does not multiply, as stated in the Qur'an, Surah Ali Imran verse 130.

This condition is very dilemmatic considering that banking has taken a big role in facilitating matters, either through savings and loans, or as a third party to buy a house, vehicle, and others. Banking mobilizes funds from the community to be stored in their banks and redistributes them in the form of credit and banking services. Because it provides a financial services business, banks take the excess from transactions made by the community.<sup>2</sup>

Banking also plays an active role as a party that maintains economic stability so that there are no price fluctuations in the market.<sup>3</sup> Seeing the urgency of this banking, it is impossible to separate banking from people's lives. Banking has transformed into a legal entity that has the power to maintain economic stability. Responding to this concern, Islamic figures throughout the world who are members of the OIC initiated the use of an Islamic bank that used the first profit-sharing system in 1974 in Jeddah under the name of the Islamic Development Bank. The birth of Bank IDB also became the embryo of Islamic banking that has developed widely today.<sup>4</sup>

The continuation of banking with the Islamic system has not sparked debate among scholars about the status of conventional bank interest. Instead of supporting the alternative of sharia banks that do not adhere to the usury system, they have even issued fatwas that legitimize the interest system in conventional banks with the argument that bank interest is not the same as usury. Sheikh Ali Jum'ah is one of the contemporary scholars who holds this opinion. The characteristics of Ali Jum'ah's thinking which tend to be contextual and adaptive make his fatwas often at odds with the majority of scholars. Ali Jum'ah is very vocal about the issue of ijtihad as something that still has room to this day. He emphasizes the realization of ijtihad towards modern problems that prioritize the principle of *maqahid syari'yyah* by studying texts that are *zhanni* and abandoning the *qhat'i*. Ali Jum'ah's ijtihad discourse is motivated by the limited texts of the Qur'an and hadith which are inversely proportional to the increasing number of problems.<sup>5</sup>

However, Ali Gomaa's view on bank interest which is already final *halal* according to him remains an endless discussion among Islamic thinkers. This article will analyze Ali Gomaa's paradigm of thinking on bank interest and his ijtihad methodology from the perspective of Usul Fiqh. Analysis with the theory of ushul fiqh is very necessary because ushul fiqh is the main formulation of ijtihad in Islam so that to find out the mechanism of the fatwa, it is necessary to see what kind of method is used to produce a fatwa that bank interest is permissible. Studies related to Ali Gomaa's opinion on bank interest from the perspective of *ushul fiqh* are still rare.

<sup>2</sup> Jati Riw Maliastuti, Tedi Kholiludin, "Analisis Pendapat Yusuf Qardhawi Dan Ali Jum'ah Tentang Hukum Bunga Bank," *Tasamuh* 3 (2022): 134–56.

<sup>3</sup> Anurag Jaiswal and Mrs. Rashmi Tripathi, "The Role of Commercial Banks in Economy Stability," *International Journal of Research Publication and Reviews* 5, no. 4 (April 2024): 6822–25.

<sup>4</sup> Novan Fatchu Alafianta, Muhammad Abdul Aziz, and Jaya Sahputra, "A Historical Review of the Development of the Islamic Banking System (An Analytical Study)," *Al-Iktisab: Lournal of Islamic Economic Law* 5, no. 2 (November 2021): 133–47.

<sup>5</sup> Miftahul Ulum and Fajar Fajar, "Studi Pemikiran Ali Jum'ah Dalam Masalah-Masalah Mu'amalat Maliyyah Mu'asirah," *METODOLOGI STUDI ISLAM. Al-Adalah: Jurnal Syariah Dan Hukum Islam*. 5, no. 1 (June 22, 2020): 79–94.

The research conducted by Ismiati and Fansuri only focuses on the comparison of the views of contemporary scholars and their responses to Ali Gomaa's fatwa.<sup>6</sup> The research entitled "The Absence of Banks Is Riba: A Critical Study of The Thoughts of The Former Egyptian Mufti Ali Gomaa" is closest to the essence of Ali Gomaa's view, but does not discuss it with the theory of *ushul fiqh*.<sup>7</sup> In this study, the author will try to complement previous studies by reevaluating Ali Gomaa's views on bank interest from the perspective of *Usul Fiqh*.

This research is qualitative research with a descriptive approach. The data sources used are books, journals by Ali Gomaa as the main source, and other related materials such as classical *ushul fiqh* books, books and journals related to the concept of bank interest. The results of this study will later show a description of the method and *illat al-hukm* that Ali Gomaa considered in issuing his fatwa on the permissibility of bank interest.

### Over View of Fatwa and Ijtihad

Fatwa etymologically is derivative from الفتوى, الفتوى, والفتوى which means أبان (to explain). (Manzhur, Tt) Fatwa is taken from the word الفتى which means a young man who is still strong (physically). In terms of terminology, a fatwa is explaining sharia law without any demands to implement it or is not binding.<sup>8</sup> The substance of the term fatwa, namely the legal issues submitted by a *mustafti* to a *faqih* related to Sharia issues so that the resulting law or answer is an answer to Sharia law.<sup>9</sup>

Fatwa is a response to an incident (providing a firm response to all incidents that occur in society). In addition, a fatwa can also be interpreted as an answer to a question or the result of *ijtihad* or legal determination. Wahbah Zuhaili stated that the scope of a fatwa is more specific than *ijtihad*, namely that *ijtihad* is the exploration of Islamic law (*istinbath al-ahkam*) whether there is a question or not, while a fatwa will not be issued by a mufti except for the answer to the question and the mufti who issued the fatwa knows the law of the problem raised.<sup>10</sup> Thus, a mufti is someone who carries out *ijtihad* (*mujtahid*) and is someone who is an expert in Islamic law (*faqih*).

Fatwa is very urgent in responding to human behavior in the context of worship, both *madhah* and social charity, which always requires legal answers. The presence of cases that require legal status must be decided using collective *ijtihad* (*ijtihad jama'i*), which is a more sustainable, focused, and more precise solution because it involves various parties with their respective expertise related to the object of *ijtihad*. An-Nawawi in his book *al-Majmu' Syarh al-Muhadzab* stated that the existence of a mufti in a communal scope is *fardhu kifayah*, which means that if in a certain space and time in a geographical area, no one can issue a fatwa on religious law, then the

<sup>6</sup> Ismiati and Fuad Fansuri, "Merespon Argumentasi Ulama Al-Azhar Tentang Riba, Bunga Bank Dan Kredit," *Hamalatul Qur'an: Jurnal Ilmu-Llmu Al-Our'an* 3, no. 2 (2022): 39–48.

<sup>7</sup> Shofa Robbani, Ifa Khoirra Ningrum, and Imroatul Azizah, "THE ABSENCE OF BANKS IS RIBA: A CRITICAL STUDY OF THE THOUGHTS OF THE FORMER EGYPTIAN MUFTI ALL GOMAA," *Proceeding of And International Conference on Education, Society and Humanity* 2, no. 1 (2024): 138–46.

<sup>8</sup> Ahmad Izzuddin, *Reformulasi Fatwa Sebagai Bahan Pertimbangan Hukum Positif Di Indonesia, Dalam; International Seminar Proceeding (the Dynamics of Islamic Law in Southeast Asia)*. (Malang: UIN- MALIKI PRESS, 2013).

<sup>9</sup> Ibnu as-Sholah Ustman bin Abdurrahman, *Adab Al-Mufti Wa al-Mustafti* (Madinah al-Munawwaroh: Maktabah Ulum wa al-Hikam, 1986).

<sup>10</sup> Wahbah Al-Zuhayli, *Ushul Fiqh Al-Islami* (Damaskus: Dar al-Fikr, 1986), 46.

community will be classified as sinful, because they have neglected the obligations that should have been carried out by one of them.<sup>11</sup>

Based on various opinions or affirmations about the definition of a fatwa, at least two important meanings can be found

1. A fatwa is responsive, namely as a legal answer (legal opinion) issued after a question or request for a fatwa
2. A fatwa as a legal answer (legal opinion) is not binding because it is not a court decision (*qadla*).<sup>12</sup>

Ijtihad in terms of language is an optimal effort and bearing a heavy burden to achieve something. In terminology, the *fuqaha'* and *ushuliyyin* have different views.<sup>13</sup> Al-Amidi in his book *al-Ihkam fii Ushul al-Ahkam*, states that ijthad is devoting all abilities to seeking sharia laws, which are *dzanni* in nature to the extent that he feels unable to exceed his efforts.<sup>14</sup> In line with several statements above, Imam as-Syaukani in *Irsyad al-Fuhul* calls it a serious effort to obtain operational sharia laws (observation) by drawing legal conclusions (*istinbath*).<sup>15</sup> Looking at the understanding of ijthad in the reality of the paradigm presented by al-Amidi, it contains the understanding that the limitations of this ijthad lie in the effort to issue practical sharia law at the level of *dzanni*, so it can be concluded that the ijthad produced by a mujtahid is relative and not true, or (in essence) the law resulting from ijthad is close to the truth. It is said so because every ijthad if it is correct it gets 2 (two) rewards and (if) it is wrong it "merely" gets 1 (one) reward.<sup>16</sup>

From the description above, it can be stated that there must be several elements in ijthad, namely

1. *Mujtahid* (the person who carries out ijthad)
2. The problem that will be explored, the status of which requires its legal status
3. *Istinbath* method (concluding opinions)
4. *Natijah* or legal conclusions resulting from ijthad.<sup>17</sup>

## Differences Between Fatwa and Ijtihad

In contrast to ijthad, a fatwa is an implication that arises from a question about Islamic law on a particular issue. While ijthad is considered and stated as a way out or solution (*makhroja*) in obtaining several legal provisions from the evidence (either from the Shariah text or *qauly*) as its main basis. In line with this, ijthad is a method of searching for the law that is used to provide legal certainty that arises as a result of demands and interests in transactions.<sup>18</sup> The difference

<sup>11</sup> Muhyiddin bin Syaraf Al-Nawawi, *Al-Majmu' Fi Syarh al-Muhadzab* (Beirut: Dar al-Fikr, 2000).

<sup>12</sup> Alamul Huda, "Maqashid Syari'ah Dalam Fatwa Dewan Hisbah Persis," *De Jure: Jurnal Hukum Dan Syar'iah* 6, no. 1 (2014), <https://doi.org/10.18860/j-fsh.v6i1.3191>.

<sup>13</sup> Ma'luf Loewis, *Al-Munfid Fi al-Lughot* (Beirut: Dar al-Masyriq, 1981), 95.

<sup>14</sup> Al-Amidi, *Al-Ihkam Fi Ushul al-Ihkam* (Beirut: Dar al-Fikr, 1981), 102.

<sup>15</sup> Muhammad Ma'shum Zainy, *Ilmu Ushul Fiqh* (Jombang: Darul Hikmah, 2008), 57.

<sup>16</sup> Enny Nazrah Pulungan and Ali Akbar, "IJTIHAD AS A SOURCE OF DYNAMICS ESTABLISHMENT OF ISLAMIC CULTURE," *An Nadwah* XXVIII, no. 1 (June 2022): 8–20.

<sup>17</sup> Juma Shaban Chibololo, "Understanding Ijtihad or Personal Reasoning in Islam," *International Journal of Research and Innovation in Social Science (IRISS)* V, no. V (May 2021): 530–37.

<sup>18</sup> Marzuki Umar, "The Concept of Ijtihad as a Method of Renewing Ibn Taimiyah's Islamic Law," *Jurnal Al Tasyri'iyah* 1, no. 1 (2021): 27–38.

between fatwa and ijtiḥad lies in its internal implementation. As explained previously, a fatwa will be valid if a mufti receives a question about the law of a religious issue or problem from a *mustafti*, either an individual or a communal organization. In this context, a fatwa can be articulated as an opinion about a law in Islam which is a response or real answer to the question asked by the fatwa requester.<sup>19</sup>

Concerning ijtiḥad and fatwa, Ali Gomaa himself is a grand mufti of the Republic of Egypt. He is a scholar who asserts that the door of ijtiḥad will never be closed and will continue to be open forever. He stated that ijtiḥad does not have a door that can be opened and closed. This statement was made while filling a program on one of the Egyptian television channels entitled “*Wallahu A’lam*”.

Referring to this expression, there are at least two reasons why ijtiḥad is necessary. The first is that there are passages which are still of the nature of *zanni* (*Dzanniyah Nushush* which is wisdom and wisdom of Allah SWT. Allah makes problems that are of the nature of *furu’iyyah* as a ground for ijtiḥad by giving latitude to the people and this is a norm because of the end of the treatise prophetic while the treatises revealed are universal. The second is that the texts of the Qur’an and ḥadith are very limited, while problems in society continue to increase, requiring the development of laws from existing texts. In another interview, Ali Gomaa even said emphasized that there is a need for reform in fiqh while still emphasizing *maqasid asy-syari’ah* without having to go beyond the limits and not make ijtiḥad on *qat’i* texts.<sup>20</sup>

From the basis of his thought, Ali Gomaa has produced many contemporary legal products that are different from other scholars in the world. Not a few of his *istinbath* results are controversial because of their significant differences with other scholars. Among them are the permissibility of test tube babies, the halalness of conventional insurance, bank interest legislation, and other issues that can be studied directly in his book *Muamalah Maliyah Muashirah*.

## Bank Interest

Banking according to Law No. 7 of 1992 concerning banking is business entities that collect funds from the public in the form of savings and distribute them to the community to improve the standard of living of many people. The definition focuses that the main business of the bank is to collect funds in the form of deposits which are the source of bank funds. This definition emphasizes that the distribution of bank funds should not be solely to reap the greatest possible profit for the owner, but its activities must also be aimed at improving the social standard of the community.<sup>21</sup> According to Kasmir, a bank can be simply defined as a financial institution whose main activity is collecting funds from the public distributing these funds back to the public, and providing other banking services.<sup>22</sup>

Banks have a fairly crucial role in financial matters in the economic system worldwide. Banks are institutions that have the main function as financial intermediaries between parties who have

<sup>19</sup> Muhammad Fauzi, Amalia Nur Azizah, and Lena Nurfauliyah, “The Concept of Ifta’ in Establishing Halal Law (Study of Usul Fiqh on Legal Determination Methods),” *Journal of Digital Marketing and Halal Industry* 1, no. 1 (2019): 83–92.

<sup>20</sup> Ulum and Fajar, “Studi Pemikiran Ali Jum’ah Dalam Masalah-Masalah Mu’amalat Maliyyah Mu’asirah.”

<sup>21</sup> Nur Kholis, “PERBANKAN DALAM ERA BARU DIGITAL,” *Economicus* 12, no. 1 (June 2018): 80–88.

<sup>22</sup> Kasmir, *Bank Dan Lembaga Keuangan Lainnya* (Jakarta: Raja Grafindo, 2002), 72.

funds and parties who need funds and as institutions that function to facilitate the flow of payment traffic and services to the community.<sup>23</sup> According to Muhammad Shahrur, a conventional bank is a business institution that implements an interest system as a bank mechanism to manage the circulation of funds in the community. Members of the community who have funds are encouraged to deposit unused funds with the bank for a certain period. Then the bank relends the funds to other people who need them for a certain period.<sup>24</sup>

As an effort to increase public funds that have not been met by the conventional banking system and to realize the public's need for banking services based on Sharia principles, Sharia banking was officially introduced in 1992.<sup>25</sup> In general, both conventional banks and Islamic banks have similarities, namely related to financing products, technicalities of receiving money, transfer mechanisms and others. But there are also fundamental differences, namely that the contracts carried out by Islamic banks have worldly and hereafter consequences by Islamic law, while conventional banks only have worldly consequences. In terms of profit-making, Islamic banks use the principle of profit sharing, in contrast to conventional banks using interest rates in distributing their funds.<sup>26</sup>

In substance, bank interest is a reward from conventional banks to customers who buy or sell their products. Interest can also be interpreted as the price that must be paid to customers (who have savings) with what must be paid by the customer to the bank (customers who get loans). Interest is also a liability on money loans, usually expressed as a percentage of the money lent.<sup>27</sup> However, if seen from another perspective, the reward for banking services is in line with conventional accounting theory. The income statement is the result of a sacrifice, which has risks.

The risk when depositing funds (risk) to the Bank in the form of savings is in the form of admin and tax deductions. Another risk is if you deposit funds to a Conventional Bank in particular, then the risk of the funds being used for something that is not halal in Sharia.<sup>28</sup> Suppose the depositor considers that the interest percentage in his savings is only a small amount and does not mind mixing it with his money. In that case, the analogy of sharia is the case of impure water that is mixed a little with a lot of water but is still considered clean.

In its implementation, conventional banking applies two types of banking interest, namely:

1. Deposit Interest, which is interest given by banks as a reward for customers who save their money in the bank. For example, checking deposits, savings interest, and time deposits. In other words, deposit interest is the price that must be paid by the Bank to customers who deposit their money in the bank.
2. Loan Interest, which is interest given by customers as a service fee paid by borrowing customers or debtors to the bank for their loans for investment, working capital, and

<sup>23</sup> Sesak Ayu Sriary Bhegawati and Made Suyana Utama, "The Role of Banking in Indonesia in Increasing Economic Growth and Community Welfare," *South East Asia Journal of Contemporary Business, Economics and Law* 22, no. 1 (August 2020): 83–91.

<sup>24</sup> Muhammad Shahrur, *Al-Kitab Wa al-Qur'an: Qira'ah Mu'ashirah* (Damaskus: al-Halli Li al-Thiba'ah, 1990).

<sup>25</sup> Muhammad Tun Samudra, "Politics of Sharia Banking Law in Indonesia," *LEGAL BRIEF* 11, no. 2 (May 2022): 1507–15.

<sup>26</sup> Antonius Prahendratno, "Analysis of The Differences and Relevance of Islamic and Conventional Banking Principles," *JURNAL SYNTAX TRANSFORMATION* 4, no. 5 (June 2023): 15–22.

<sup>27</sup> Chamim Tohari, "THE DIFFERENCE OPINIONS ANALYSIS ON CONVENTIONAL BANK INTEREST LAW ACCORDING TO USHUL FIOH," *Jurnal Ilmiah Al-Syir' Ah* 17, no. 1 (2019): 1–18.

<sup>28</sup> Taofik Hidayat, "Financial Technology in Islamic View," *UMSIDA* 4, no. 2 (2020): 1–29.

trade purposes. Loan interest can also be interpreted as the price that must be paid by debtors for credit loans to the Bank.<sup>29</sup>

For the bank concerned, both types of interest are the main components of cost and income factors. Deposit interest and loan interest are influenced by each other. Loan interest will also affect if the deposit interest is high, and vice versa, if the deposit interest is low, then the loan interest will also decrease.<sup>30</sup> From the previous description, it can be stated that what is called bank interest is an additional amount of money that must be paid based on the percentage of the loan given by the bank to the debtor or borrower of money at the bank.

### Dynamics of Bank Interest in the View of Scholars

The controversy over bank interest as a bank or customer's income is based on the usury norm which is its substance. According to Al-Razi and Al-Shabuni, usury is an absolute addition.<sup>31</sup> Al-Jurjani defines usury etymologically as meaning *ziyadah* or addition.<sup>32</sup> Abdurrahman al-Jaziri in his Book of *Fiqh ala Madzahib al-Arba'ah* states that usury according to the jurists is an addition to one of two similar goods exchanged without any equality of value between the two goods.<sup>33</sup> According to other Shafi'i scholars, usury is interpreted as a transaction with a certain reward whose equal measure or time measurement is unknown when the transaction occurs with a delay in the delivery of the two exchanged goods or one of them.<sup>34</sup> According to Muhammad Abduh, usury is an additional requirement from the owner of the property to the borrower (of his money), due to the delay of the promise of payment by the borrower from a predetermined time.<sup>35</sup> This definition is in line with the view of al-Qurthubi who stated that usury is the taking of additional assets or capital in a void manner, either in debt or buying and selling.<sup>36</sup>

From the several definitions above, it can be concluded that usury is an additional margin from the exchange between two goods that do not correspond to those stated in the contract. Then whether interest is classified as usury or not. There are three opinions about the categorization of bank interest in usury<sup>37</sup>

1. Bank Interest is classified as usury and is considered haram.
2. Bank interest is permissible because it has a different substance from usury which is forbidden.

<sup>29</sup> Tohari, "THE DIFFERENCE OPINIONS ANALYSIS ON CONVENTIONAL BANK INTEREST LAW ACCORDING TO USHUL FIOH."

<sup>30</sup> Kasmir, *Dasar-Dasar Perbankan* (Jakarta: PT. Raja Grafindo Persada, 2010), 132.

<sup>31</sup> Muhammad Ali Al-Shabuni, *Rawai' al-Bayan Tafsir Ayat al-Ahkam Min al-Qur'an* (Beirut: Dar al-Fikr, n.d.), 383.

<sup>32</sup> Abdurrahman Al-Jurjani, *Kitab Al-Ta'rifat* (Beirut: Dar al-Kutub al-Ilmiyah, n.d.), 109.

<sup>33</sup> Abdurrahman Al-Jaziri, *Fiqh 'Ala Madzahib al-Arba'ah* (Beirut: Dar al-Fikr, 1972), 198.

<sup>34</sup> Al-Nawawi, *Al-Majmu' Fi Syarh al-Muhadzab*, 403.

<sup>35</sup> Abdul Haris Romdhoni, Muhammad Tho'in, and Agung Wahyudi, "Sistem Ekonomi Perbankan Berlandaskan Bunga (Analisis Perdebatan Bunga Bank Termasuk Riba Atau Tidak)," *Jurnal Akuntansi Dan Pajak* 13, no. 01 (2012), <https://doi.org/10.29040/jap.v13i01.190>.

<sup>36</sup> Abu Adullah Muhammad bin Ahmad bin Abu Bakr al-Anshori Al-Qurthubi, *Bidayah Al-Mujtahid Wa an-Nihayah al-Muqtashid* (Beirut: Dar al-Ma'rifah, 1983), 267.

<sup>37</sup> Ahmad Dakhoir, Jefry Tarantang, and Ghozali Rahman, "BANKERS' ATTITUDES TO THE LEGAL POSITION OF BANK INTEREST: New Insights for the Development of Fiqh Wasathiyah Maliyah," *Akademika : Jurnal Pemikiran Islam* 27, no. 1 (June 2022): 47–60.

3. Bank interest is haram but because it is difficult to avoid it and no other alternative has been found, it is permissible.

*The first opinion* is that some scholars, such as Yusuf Qaradawi, Mutawalli Sya'rawi, Abu Zahrah, Wahbah Zuhaili and Said Ramadhan al-Buthi, state that bank interest is illegitimate because it is usury. This opinion is also the opinion of the Islamic Ulama Forum, including *Majma' al-Fiqh al-Islamy*, *Majma' Fiqh Rabithah al-Alam al-Islamy*, and the Indonesian Ulama Council (MUI). Wahbah al-Zuhaili in *Fikih al-Islami wa Adillatuh* states that usury or bank interest is classified as usury nasi'ah, both with low and multiple amounts. Because the main activity of banks is to provide loans (debts) and receive debts.<sup>38</sup> The basis for the opinion of the first group of scholars is the word of Allah in Surah al-Baqarah verse 275, which means "Even though Allah has permitted buying and selling and prohibited usury."

The verse states about the prohibition of *riba an-nasi'ah*, namely the practice of usury that occurred during the pre-Islamic period of ignorance. Regarding whether bank interest is the same as usury or not, Abu A'la Al-Maududi stated that bank interest is included in usury which is prohibited. Al-Maududi views usury in terms of the impact it causes.<sup>39</sup> According to Adiwarmar Karim, the bank that acts as a creditor requires the amount of interest to be determined and first regulated at the beginning of the transaction. Even though the customer gets a loan and does not necessarily get a profit, he must pay the interest to the bank without seeing whether the customer gets a profit or loss. This is the impact that occurs, namely a loss that is detrimental to the customer.<sup>40</sup>

This paradigm refers to the concept that every debt that requires additional or beneficial capital can be used, even if it is not multiplied. Therefore, no matter how small, bank interest is still forbidden. Because based on the theory of *qiyas* in terms of *ushul fiqh*, the case to be revealed (*furu'*) and the case to be *qiyas* (*ushul*) must both be based on *illat jali*.<sup>41</sup> And both cases (bank interest and usury) are united by the same *illat*, namely addition or interest without compensation. Thus, bank interest is the same as interest.

*The second opinion* comes from contemporary scholars, such as Ali Gomaa, Muhammad Sayyid Thanthawi, Abdul Wahab Khalaf, and Mahmud Syaltut, who emphasize that bank interest is legal and does not include usury. This opinion is following the fatwa issued by *Majma' al-Buhus al-Islamiyyah* on 23 Ramadhan 1423 H, coinciding with 28 November 2002 AD. The basis for this opinion is the Qur'an, Surah An-Nisa' verse 29, which means "O you who believe, do not falsely devour each other's wealth, except employing commerce that is carried out with mutual consent between you."

The content of this verse is Allah's prohibition against people consuming other people's property in a false way, such as stealing, taking by force, and taking by fraudulent means such as usury. On the other hand, Allah allows consuming this property if it is done through buying and selling based on willingness. Therefore, the willingness of both parties in the transaction to

<sup>38</sup> Al-Zuhayli, *Ushul Fiqh Al-Islami*, 138.

<sup>39</sup> Dakhoir, Tarantang, and Rahman, "BANKERS' ATTITUDES TO THE LEGAL POSITION OF BANK INTEREST: New Insights for the Development of Fiqh Wasathiyah Maliyah."

<sup>40</sup> Marwini, "Riba Controversy in Conventional Banking and Its Impact on the Economy," *Az Zaqqa* 9, no. 1 (February 2017).

<sup>41</sup> Muchlis Bahar, "QIYAS ANALYSIS AS A LEGAL ISTINBATH METHOD AND ITS IMPLEMENTATION IN SHARIA ECONOMIC LAW," *JURNAL KELOLA: Jurnal Ilmu Sosial* 1, no. 2 (March 2018): 1–9.

determine the amount of profit first, as is the mechanism in conventional banking, is justified in Islam. The group claiming that bank interest is halal argues that it is different from usury, so it is not haram. The *illat* of the law of usury that causes it to be haram, namely (*ziyadah*), is not present in bank interest because the addition or interest deducted from loans or additions given by the bank from customer deposits is done on a mutual basis, and no one feels forced.

According to Sheikh Rasyid Ridha, usury that is forbidden in the Qur'an is usury that is multiplied by the principal amount of the debt given.<sup>42</sup> While bank interest is not multiplied by the principal amount, then bank interest debt is not usury. Sheikh Azhar Sayyid Thantawi, who is also a former grand mufti, stated that interest on term deposits in banks that are set at a large interest percentage is not forbidden in Islam. Opinions on the validity of bank interest were also put forward by Abdul Hamid Hakim, Mustafa Ahmad Zarqa, and Syafruddin Prawiranegara. According to Syafruddin, bank interest is not usury because bank interest is a service that is issued or collected from funds for administrative purposes. The existence of a sense of willingness at the beginning of the contract between the bank and the customer is an important aspect that distinguishes usury that is not willing from the debtor.<sup>43</sup>

This group of scholars who legalize bank interest view both bank administration fees and bank interest must being prohibited because without them banks cannot operate. So the existence of something as a tool is as legal as the existence of an origin. In this case, the law on bank charges is the same as bank interest, which is permissible (not included in the usury category).<sup>44</sup>

Based on the description above, it can be said that bank interest according to the view of the ulama which permits it is not categorized as usury as long as it is still within reasonable limits, does not double and equally benefits both parties (bank and debtor), and has social and economic functions.

*The third opinion* is the scholar group who stated bank interest is haram however should be permitted because it is difficult to avoid it in the modern economic system and no other alternative has been found yet. Among the scholars who view the same is Mustafa al-Zarqawi. According to him, bank interest is an unavoidable reality. Therefore, Muslims may transact with banks for emergency reasons. In Indonesia, the same view was expressed by the Muhammadiyah Tarjih Council. For Muhammadiyah, the *'illat* for prohibiting usury is the prohibition of exploitation or description (*zulm*) of borrowing funds. If the *'illat* is in bank interest, then bank interest is the same as usury. Conversely, if the *'illat* is not in bank interest, then bank interest is not usury so it is not haram. However, this ruling only applies to private banks. Bank interest given by state-owned banks to their customers or vice versa, is included in business matters that are considered *syubhat* (not haram and not halal). It is said to be *musytabihat* because there are two tendencies, namely halal or haram, and also because banks do not differentiate between people who borrow money for consumption and borrow for production. Meanwhile, bank interest managed by the government has not yet reached a form that is guaranteed as Islamic usury or not.<sup>45</sup>

<sup>42</sup> Rasyid Ridha, *Tafsir Al-Manar* (Mesir: Mathba'ah Muhammad Ali Shahib wa Awladih, n.d.), 74.

<sup>43</sup> Nurhadi, "Bunga Bank Antara Halal Dan Haram," *Nur El-Islam*, 4, no. 2 (October 2017): 49–78.

<sup>44</sup> Dakhoir, Tarantang, and Rahman, "BANKERS' ATTITUDES TO THE LEGAL POSITION OF BANK INTEREST: New Insights for the Development of Fiqh Wasathiyah Malayah."

<sup>45</sup> Syarifuddin Syarifuddin, "Fatwa Majelis Tarjih Muhammadiyah Tentang Bunga Bank," *Jurnal Ilmiah Al-Syir'ah* 9, no. 1 (2011).

The state bank is considered an institution that encompasses almost all the goodness in the modern economy and is seen as having norms that benefit society in terms of prosperity. The interest charged in its credit system is shallow so no party is disappointed.

The paradigm of the third group of ulama's opinion is still not much different from the group of ulama who allow bank interest. Fazlur Rahman, a modernist figure, said that bank interest is included in the matter of *ijtihadiah* in the sense that it is not found in the sources of Islamic law, the Qur'an and hadith as *hujjah al-syari'iyah* and the existence of Islamic law for the welfare of human life both in the world and in the hereafter.<sup>46</sup> Therefore, the analogy *illat* to usury is something that can still be reviewed for its meeting point. Especially amid a modern economic system where the existence of banks is very important in the world economy.

### Ali Gomaa's Fatwa on Bank Interest

The urgency of Bank Financial Institutions is something that can no longer be debated considering that it may facilitate the management and equalization of the community's economy. The consensus of scholars in Islam has reached an agreement that usury is forbidden, in its activities banks use contracts that result in additional outside and the additional called interest according to DSN-MUI is declared forbidden.<sup>47</sup> As a result, all activities in banks are also considered forbidden. In contrast to the results of the DSN-MUI fatwa, the Egyptian Dar-Ifta fatwa stated that it is permissible to take the additional amount so that carrying out activities in the bank is also permissible.<sup>48</sup>

This fatwa is in line with the view of Dr. Ali Gomaa, the founder of Dar Ifta al-Mishriyyah and former grand mufti of Egypt, in which he emphasized that bank interest is permissible and that there is nothing wrong with borrowing with interest, because the place of usury, namely gold and silver, has disappeared, and fiat money has become the origin of transactions described by the banking system as contracts and financing.<sup>49</sup>

In an interview conducted by Asharq Al-Awsat, he was asked, "You stated on a television show that interest on bank loans and deposits is 'halal', which has drawn objections from many scholars who consider it 'riba'. How do you reconcile these two views?" Dr. Ali Gomaa's answer was, "The Islamic Research Academy has decided on this issue, issuing a fatwa that allows setting interest rates on bank investments." He further stated that since 1973 currencies have been devalued and the Egyptian Pound has decreased in value. Banking and times have changed significantly since then. Due to these new conditions, he believes that receiving fixed interest on bank investments is permissible. He concluded by stating that in general, this is a debatable issue among scholars.<sup>50</sup>

According to Ali Gomaa, business capital from banks is included in the *khilafiyah* issue (having differences) because many scholars have different opinions about the status of whether

<sup>46</sup> Nurhadi, "Bunga Bank Antara Halal Dan Haram."

<sup>47</sup> M Dayyan and R. D Chalil, "THE ATTITUDE OF MERCHANTS TOWARDS FATWA ON RIBA AND CONVENTIONAL BANK IN LANGSA," *Share: Jurnal Ekonomi Dan Keuangan Islam* 9, no. 1 (May 9, 2020): 48–71.

<sup>48</sup> Maulana Yusuf Alamsyah and Khaleel Al-Obaidi, "Muhammad Sayyid Tantawi's Interpretation of the Verses of Riba," *Hanifiya: Jurnal Studi Agama-Agama* 6, no. 1 (2023): 65–72.

<sup>49</sup> Robbani, Ningrum, and Azizah, "THE ABSENCE OF BANKS IS RIBA: A CRITICAL STUDY OF THE THOUGHTS OF THE FORMER EGYPTIAN MUFTI ALL GOMAA."

<sup>50</sup> Asharq al-Awsat, "Q & A with the Grand Mufti of Egypt," <https://eng-archive.aawsat.com/theaawsat/features/q-a-with-the-grand-mufti-of-egypt>, July 14, 2007.

bank interest is the same as usury. Although the majority of scholars believe that bank interest is haram, it is not usury because there are differences of opinion again whether bank interest is included in usury or incorrect profit sharing (*mudharabah fasidah*). For instance, a contractor who is forced to borrow money with a usury system. Then he borrows money from another bank with an interest system to complete his work where if he does not withdraw the loan from the bank he will have problems with the homeowner. According to Ali Gomaa, the meaning of difficulty (*dharurah*) has not emerged from the case above. Because the meaning of force is something that if not done will result in death or near death. Ali Gomaa suggests that to start a home contractor business, one must carefully consider one's financial capabilities, without having to deal with usury.<sup>51</sup>

The background of Ali Gomaa's fatwa is closely related to the current banking system which is no longer based on gold and silver as goods exchanged and as a measure of value. Since 2003, the use of gold as bank reserves has been no longer valid, after the US dollar currency took over the position of gold as reserves in banks. Thus, the value of paper money is no longer based on the value of gold, and gold is no longer a parameter for the increase or decrease in the value of paper money.<sup>52</sup> The standard fatwa agreement of Majma' Al-Bohuts Al-Islamiyyah in Egypt on November 28, 2002, stated that the projection of banking transactions is an investment, while in fiqh the offense is legitimate *mudharabah* and is legally permissible. The fatwa was produced by considering the latest amendments to banking law as well as central bank regulations and general provisions of banking instruments.<sup>53</sup>

Ali Gomaa's very flexible opinion on bank interest refers not only to primary texts such as the Qur'an and hadith but also to the context and situation of the world today. People today are smarter and more careful in managing loans from banks. The many laws and regulations that protect the rights of customers and lenders are also supporting factors that can minimize the occurrence of acts of oppression by creditors against debtors, as happened in the past.

### Analysis of Ali Gomaa's Fatwa on Bank Interest in the Ushul Fiqh Perspective

Ali Gomaa is a scholar who has a view of jurisprudence in the Shafi'i school of thought and adheres to the faith of Imam Hasan al-Asy'ari. In carrying out *ijtihad*, the method used by Ali Gomaa is not much different from the *ijtihad* methods used by other Shafi'iyyah scholars, namely looking at the text of the Qur'an, hadith, *ijma'* and *qiyas*, as well as selecting or look for the opinions of previous scholars contained in the books of the four *mu'tabarah* schools of thought, namely, *Hanafiyyah*, *Malikiyyah*, *Shafi'iyyah* and *Hanabilah* on *furu'iyah* issues.

The results of Ali Gomaa's *ijtihad* are very clear with the realization of the principle of *maqashid sharia* to realize public welfare. The use of the above method is a method that is relevant in the present era which requires renewal in the field of fiqh and fatwa. Ali Gomaa also emphasized that a legal investigation must be studied by comparing it to *turats* (the opinions of previous scholars), then issuing a fatwa that has the same legal *illat*. This *ijtihad* method is known

<sup>51</sup> Maliastuti, Tedi Kholiludin, "Analisis Pendapat Yusuf Qardhawi Dan Ali Jum'ah Tentang Hukum Bunga Bank."

<sup>52</sup> Muhammad Sayyid Thantawi, Bunga Bank Halal? Judul Asli: Muamalat al-Bunuk Wa Ahkamuha as-Syar'iyyah (Ter. Abdul Rouf). (Depok: Keira Publishing, 2019), 342.

<sup>53</sup> Thantawi, 345.

by scholars as *ijtihad intiqā'i*.<sup>54</sup> In selecting the opinions of scholars, Ali Gomaa requires a *mufti* to pay attention to several provisions before the fatwa is issued, namely:

1. The opinion that is used as a source does not contradict the *maqasid asy-syari'ah*.
2. The fatwa must be under the socio-cultural community at the time the fatwa is issued.
3. The fatwa must pay attention to the public interest, not individual interests.
4. Adhere to the principle of *rukhsah* (ease).<sup>55</sup>

Ali Gomaa stipulates that a *mufti* must go through four stages before issuing a fatwa. The first stage is *marhalah al-tashwir* (the stage of problem description). In this stage, a *mufti* describes the problem submitted by the *mustafti* (the person requesting the fatwa) so that a *mufti* first understands the question submitted to him perfectly. For example, in a question regarding the law of bank interest, the first step for a *mufti* is to comprehensively understand bank interest, including its essence, types, sources, management by the bank, and how the bank distributes it to customers. The second stage is *marhalah al-takyif* (adjustment/matching the problem), namely matching the problem description proposed by a *mustafti* with the problem that already exists in the *turats* in the chapters of *fiqh*. The third stage is *marhalah bayan al-hukm* (legal explanation stage). Namely studying the texts of the Qur'an and *hadith*, *ijma'*, and *qiyas* as well as other propositions such as *istihsan*, *mashlahah murlahah* and *sadd al-dzarai'*. In this stage, a *mufti* must understand the *dalalah* or instructions of the verse or *hadith* in question, understand the roots of the words and their context in Arabic and understand the methodology of legal *istinbath*.<sup>56</sup>

The final stage is *marhalah al-ifta'* (determination of fatwa), which is the stage where a *mufti* determines the law by considering the social context and the times. The fatwa must still pay attention to the *maqashid sharia* aspect, its conformity with the *qath'i* text, not contradict the agreed *ijma'* and not the *fiqh* rules. If the fatwa issued contradicts the four things above, a *mufti* must revise his fatwa until it no longer has any imbalances.<sup>57</sup> From his *ijtihad* methodology, Ali Gomaa appears to be very careful in carrying out his *ijtihad* by paying attention to all aspects so that the fatwa follows the correct methods for performing *ijtihad* but remains by the needs of the times and can be applied by Muslims in this modern era. Ali Gomaa has a systematic methodology in issuing fatwas but still pays attention to moderate values so that they can still be practiced by society. "I have a methodology for issuing laws, namely, I adopt a moderate, scientific, and academic approach based on evidence, proof, and sources."<sup>58</sup>

Regarding the law on bank interest, Ali Gomaa stated in his fatwa that bank interest is lawful and is not classified as usury. Ali Gomaa's fatwa on the permissibility of bank interest has two main reasons. The first is that Ali Gomaa views the essence of a bank as an intermediary institution that functions to invest money and not only as a lender and borrower. The task and function of the bank is to invest the money it gets from customers in a known area and the results of the investment return to the bank where the capital owner (customer) also gets a share of the profit. The second reason is that Ali Gomaa sees banks as a milestone for progress, prosperity,

<sup>54</sup> Ulum and Fajar, "Studi Pemikiran Ali Jum'ah Dalam Masalah-Masalah Mu'amalat Maliyyah Mu'asirah."

<sup>55</sup> Muhammad Ali Jum'ah, *Aliyyatu Al-Ijtihad* (Kairo: Dar al-Risalah, 2004), 113.

<sup>56</sup> Muhammad Ali Jum'ah, *Al-Kalim al-Thayyib Fatawa 'Ashriyyah* (Kairo: Dar as-Salam, 2013), 89.

<sup>57</sup> Jum'ah, 90.

<sup>58</sup> Imad Ahmad Hila, *Al-Ifta al-Misriyyah: Min al-Sahabi Uqbah In Amir Ila al-Duktur Ali Jum'ah*, vol. 7 (Cairo: Dar al-Ifta' al-Misriyyah, 2020), 7340.

and happiness. With banks, the economy can run well without any fluctuations in society.<sup>59</sup> If analyzed from the context of *ushul fiqh*, this condition is classified as *dharurah*<sup>60</sup> (an emergency that requires someone to do something forbidden because it can harm the safety of life) because the existence of banks and their role in the survival of society and the state are very close so that the absence of banks will affect the ongoing economy of a country.

As for the issue of bank interest, the *ijtihad* method applied by Ali Gomaa is a combination of the *bayani*, *intiqai'i*, and *istislahi* *ijtihad* methods. The first is the *bayani method*, namely *ijtihad* in explaining the existing texts, both the Qur'an and the Sunnah of the Prophet. This is then called *ijtihad Bayani*, which is an effort to provide an explanation and interpretation of a text from various aspects, leading to a conclusion on determining the law.<sup>61</sup> In applying this method to the issue of bank interest, Ali Jum'ah prioritized *tashwir al-mas'alah* (problem analysis). He invited all Islamic legal experts to reanalyze the essence of banking perfectly starting from its transaction process, function, lending mechanism, and investment so that in the end they can match it with existing texts and opinions. This is done so as not to produce fatwas that are less relevant to the times.

The second is *intiqai'i* method which means selecting one of the strongest opinions of previous scholars.<sup>62</sup> This *intiqai'i* method is also called the *tarjih* method because interrelated opinions are selected and analyzed which ones are superior to existing opinions by following *tarjih* rules. These rules are that the opinion taken must have a relationship of conformity with current living conditions, the opinion should depict gentleness and compassion towards humans, not deviate from the ease of Islamic legal provisions, and prioritize realizing the goals of the sharia, namely maintaining the welfare of humans and warding off danger from them.<sup>63</sup>

The opinion put forward by Ali Gomaa in applying his *intiqai'i* method is the opinion of his teachers such as Muhammad Sayyid Thantawi, Abdul Wahab Khalaf, and Mahmud Syaltut who emphasized that bank interest is legally valid and does not include usury. In addition to the results of *fardi ijtihad*, Ali Gomaa also saw the results of *Jama'i ijtihad*, launched by Majma' al-Buhus al-Islamiyyah with its *illat* (legal reasoning) that *ziyadah* is not included in bank interest because the addition or interest deducted from loans or additions given by the bank from customer deposits is done based on mutual benefit, and no one feels forced.

The last *ijtihad* method is *istislahi* which means an effort to reach the sharia law that is not contained in a specific text, there is no *ijma'*, or *qiyas* by using general rules on problems that allow the application of general rules.<sup>64</sup> The basic principle of this *ijtihad* refers to the principle of *jalb al-mashlahah wa dar al-mafsadah* (achieving the greatest possible benefit and avoiding harm), while still referring to the rules that have been determined by sharia.<sup>65</sup> By looking at the

<sup>59</sup> Ulum and Fajar, "Studi Pemikiran Ali Jum'ah Dalam Masalah-Masalah Mu'amalat Maliyyah Mu'asirah."

<sup>60</sup> Ade N. Rohim, "Dharurah and the Realization of Maqashid Sharia: Analysis of the Implementation of Islamic Legal Maxims on Emergency," *Nurani: Jurnal Kajian Syari Ah Dan Masyarakat* 22, no. 1 (2022): 63–80.

<sup>61</sup> Amir Syarifuddin, *Ushul Fiqh II* (Jakarta: Kencana, 2008), 241–242.

<sup>62</sup> Yusuf Qardhawi, *Norma Dan Etika Ekonomi Islam* (Jakarta: Gema Insani Press, 1997), 24.

<sup>63</sup> Qardhawi, 25.

<sup>64</sup> Hanifah Kusumastuti et al., "Concepts of Ijtihad Bayani, Ta'lili, and Istislahi on Muhammadiyah and Qauli Approach to NU," *Proceedings of the International Conference on Islamic and Muhammadiyah Studies (ICIMS 2022)* 676 (July 25, 2022): 72–78.

<sup>65</sup> Abdulrahman M.A. Albelahi et al., "The Theory of Interpretation in Solving Contemporary Legal Issues: With A Focus on the Instrument of Ijtihad," *MATEC Web of Conferences*, 2018, 1–8.

role of banks, which according to Ali Gomaa is very vital as a milestone for progress, prosperity, and making the economy run well without any fluctuations, this is the meaning of the benefits he wants to achieve as well as being *istislahi illat* (legal reasoning) in his *ijtihad*.

In the end, the flexibility of Ali Gomaa's fatwa in the case of bank interest is greatly influenced by the teacher's background and his knowledge. However, the fatwa is supported by a strong methodology by paying attention to all aspects fundamentally, both legal and academic.

## Conclusion

Ali Gomaa's *ijtihad* methodology on the fatwa of bank interest is a combination of several methods, namely (*bayani*) where he was studying verses and hadiths related to bank interest) then studying and selecting the opinions of previous scholars who permitted bank interest (*intiqā'i*) and determining the lawfulness of bank interest by considering the principle of *jalb al-mashlahah* (*istishlahi*). The *al-mashlahah* is understood from Gomaa's paradigm that the nature of a bank as an intermediary institution that functions to invest money where the capital owner (customer) also receives the results of the profit and the bank is a financial institution that can control the community in it.

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