

FATWA ON FINANCIAL NEEDS IN NON-MUSLIM MAJORITY COUNTRIES: A CASE ON MORTGAGES AND INSURANCE

Abdul Shakoor Dalvi^{1a}, Md. Faruk Abdullah^{2b*} and Abu Bakkar Siddique^{3c}

^aINCEIF University, Jalan Tun Ismail, 50480, Kuala Lumpur, MALAYSIA

E-mail: shakoord@hotmail.com¹

^bAcademy of Islamic Studies, Universiti Malaya, 50603 Kuala Lumpur, MALAYSIA

E-mail: farukabdullah@um.edu.my²

^cInternational Islamic University Chittagong, Kumira, Chattogram-4318, BANGLADESH

E-mail: absiddique1800@gmail.com³

*Corresponding Author: farukabdullah@um.edu.my

Received: 29 September 2024

Accepted: 13 January 2025

Published: 30 May 2025

DOI: <https://doi.org/10.33102/jfatwa.vol.30no2.624>

ABSTRACT

In recent years, there has been an increase in the Muslim population in some non-Muslim countries. These Muslims face challenges in their daily lives to be observant Muslims. To navigate these challenges, they turn to religious authorities for answers to these difficult situations and seek guidance through their rulings or fatawa. The objective of this paper is to explore fatawa that were issued in non-Muslim majority countries in response to challenges faced by Muslims in those countries. These fatawa sometimes make something permissible, which is ordinarily impermissible in a Muslim-majority country. The focus was on 'mortgage' and 'insurance' related fatawa. The rulings were analysed to determine the conditions under which the scholars have relaxed the requirements and the arguments used. Adopting a qualitative approach, this study analysed fatwa from various fatwa-issuing organisations, including the European Council for Fatwa and Research (ECFR) and Fiqh Council of North America. It was discovered that the main reason cited for this relaxation is an extreme necessity (darurah), although some scholars object to using this reasoning. Therefore, it is recommended that in-depth research should be conducted on the parameters of necessity (darurah) in the above-mentioned cases. This study discovered new understandings of fatwa research in the context of non-Muslim majority countries, which should benefit researchers of Islamic jurisprudence.

Keywords: Fatwa, Muslim-minority country, Muslim, Mortgage, Insurance.

1. INTRODUCTION

While Muslim minorities have lived under non-Islamic rule throughout history, there has been a considerable increase in the emigration of Muslims from different parts of the world to Europe, Australia, North America and other

so-called developed countries over the last few decades, particularly during the second half of the twentieth century. Many of these emigrants are economic migrants looking for a better life for themselves and their families, and many are fleeing political prosecution in their homelands, whereas many are coming as students and settling when they complete their studies. As a result, today, large Muslim communities live under non-Islamic rules and cultures (Duderija & Rane, 2019; Khader, 2019; Papademetriou et al., 2016; The Economist, 2019).

Muslims living in non-Muslim majority countries face challenges in their daily lives in observing their Islamic faith, e.g. in some places, it is difficult, if not impossible, to find halal alternatives for their daily needs, e.g. food, financial transactions, etc. Due to government regulation, they are sometimes forced to do something which may not be totally Shariah compliant, e.g., purchasing automobile insurance and subscribing to non-Shariah compliant retirement scheme (Arifin et al., 2019; Duderija & Rane, 2019). Faced with these challenges, observant Muslims seek solutions for these religious challenges from Muslim scholars through their *fatawa*.

This paper will explore *fatawa*, which was issued in response to situations that Muslim minorities face daily. These *fatawa* make permissible what is generally not allowable. Although there are numerous situations where the need arises due to space limitations, this paper will focus on two situations, *fatawa* permitting conventional home financing in the case of no other option and the permissibility of conventional insurance in the case of no other option. These are the two most important financial needs of the modern-day Muslims.

The organisation of the article is as follows: the next section gives an overview of *fatawa* and its role in society, details of the steps that are taken in the issuance of a fatwa, the differences in scholars' opinion while issuing the *fatwa* and the concept of *darurah* (necessity) in Islamic law. This is followed by the discussion of research methodology and the analysis of *fatawa* in the subsequent section.

2. LITERATURE REVIEW

2.1 *Fatwa and its Role in the Muslim Society*

Fatwa is an opinion issued by a religious legal authority. It is usually issued by a religious scholar or a committee of scholars in response to a query about a specific item or a situation in a particular context. It answers an unclear Shariah matter and involves declaring and explaining the Shariah ruling (Al-Shahrazuri, 1986; Hassan, 2023; Laldin et al., 2012).

A *fatwa* is issued in response to a question related to Islamic law as asked by an individual inquirer (*mustafti*), a judge (*qadi*), or a government authority or corporate entity. The process is known as *ifta*. The *fatwa* issued in response to the submitted question is usually published or disseminated in some form to the broader Islamic community. In this way, a *fatwa* guides the individual questioner while educating, informing, and guiding others (Al-Shahrazuri, 1986; Ibn Qayyim, 1991; Rusli et al., 2020).

Hosen and Black (2009) explored the distinctive place the *fatwa* has in Islamic jurisprudence, and they tried to identify the methodology used by scholars in *ifta* (the giving of *fatwa*). They claim the *fatwa* has “enabled Islamic law to be responsive to new developments and contemporary challenges.” According to them, the origin of *ifta* (the issuing of *fatwas*) can be traced back to the Prophet Muhammad (pbuh) himself, when companions asked him questions and received answers directly from the Prophet (pbuh). Following the Prophet’s death, this role fell on his companions. So, it was the companions of the Prophet (pbuh) who became, in essence, the first *Muftis*, giving *fatwas* when members of the fledgling Muslim community asked questions that required direction and guidance. These early *fatawa* were issued on a wide variety of sacred and practical subjects, and collections of *fatawa* started to develop. It has been reported that *fatawa* by Ibn ‘Abbas, was compiled in 20 volumes. The result was that issuing *fatwas* became an established mechanism for providing guidance on Islamic law. (Black & Hosen 2009)

Fatawa play an essential role in the establishment of social and economic practices. In his work, Fakhrunnas (2018) has examined the *fatwa*’s significant role in shaping Islamic society’s guidance, particularly in the context of the Islamic finance ecosystem. Muslim scholars issue rulings regarding topics that do not have a specific mention in the holy Quran or Sunnah. For example, in the Ottoman Empire, a *fatwa* was issued in 1727 authorising the printing of nonreligious books; vaccination was declared legitimate in an 1845 *fatwa* (Ekinci, 2015). Contemporary *fatawa* consider social and economic practices arising from advances in science and technology, including questions about organ donation, stem-cell research, cloning, surrogacy, etc. Advances in science have made *fatawa* one of the necessary needs and requirements of modern times (Black and Hosen, 2009).

Since there are no centralised religious authorities in non-Muslim countries like Malaysia or other Muslim countries, *fatawa* is usually issued by an individual religious scholar or an organisation. In the Americas, this is done by ‘The Fiqh Council of North America’ (established in 1986) and in Europe by the ‘European Council for *Fatwa* and Research’ (founded in 1997). These organisations have sought to provide authoritative rulings that address the

concerns of minority Muslims, assist their adherence to Islamic law, and stress the compatibility of Islam with life in diverse modern contexts.

2.2 Process of Issuing Fatawa

Muftis and organisations that issue *fatawa* follow a process for issuing a ruling. Discussed below is how a *fatawa* issuing organisation goes about its process. The steps highlighted below are used by the European Council for *Fatwa* and Research (ECFR), which was established in London in March 1997 by the Federation of Islamic Organizations in Europe (FIOE).

Caeiro (2011) examined the kind of *fatwas* that were issued by scholars in Europe. He detailed how a *fatwa* is issued by the European Council for *Fatwa* and Research and what steps muftis follow in arriving at a resolution. He also analysed to what extent *fatwas* are affected by policy discourses in the West. He mentions that the founding members of the ECFR consist of thirty Islamic scholars from different parts of Europe, North America, and the Muslim world. They include prominent names, including Yusuf Qaradawi, Abd al-Sattar Abu Ghudda, Abd Allah Bin Bayyah, Muhammad Hawari, Ali Qaradaghi, and Taqi Usmani. Three members of the Fiqh Council of North America, namely Taha Jabir al-Alwani, Jamal Badawi, and Salah Sultan, are also members of ECFR. Members of ECFR also include the Lebanese scholar Faysal Mawlawi, the Mauritanian judge Ali Salim, two South Asian scholars of Deoband, Ismail Kashhoulvi, Suhaib Hasan and Bosnian Grand Mufti Mustafa Cerić. As can be seen, it is a very diverse group of scholars. (Caeiro 2011)

The issues discussed in the ECFR meetings come from questions from Muslims living in Europe. These questions are usually sent by letter, fax or email to the Islamic Cultural Centre of Ireland. The deliberation process, which results in the issuance of a *fatwa*, typically requires many drafts and lengthy discussions. A previously issued *fatwa* by a recognised religious authority is often used as a starting point of the discussion. After the first draft is presented, passages are dropped, elaborated or modified. The ECFR's leadership tries to accommodate most of the objections which are formulated by the members. During the internal discussions, scholars take a variety of positions on issues, sometimes change their minds, and (usually) eventually settle on a compromise. Consequently, a new ruling – *fatwa* is issued.

2.3 Differences in Fatwa

In the history of Islamic jurisprudence, it is a normal phenomenon for jurists to have different opinions. The differences of opinion were prevalent even in the first generation of Muslims (Arabi, 1999). Soualhi (2012) pointed out that disputes among the Islamic jurists were quite common events except for

the cases decided by the conclusive and definite evidence from the Quran, Sunnah and consensus (ijma') of the jurists.

A few factors contribute to the differences of opinion among the scholars. One of the common factors is that scholars have differences in interpreting the meaning and intent of the texts in the Quran and Sunnah. On the other hand, scholars have different collections of *hadith* and various criteria to accept the *hadith*. Furthermore, scholars disagree with accepting different types of legal sources, i.e., public interest (*maslahah mursalah*). Scholars differ in understanding the wisdom and purpose of the Islamic law. Finally, different customs and social settings may lead to differences in *fatwa* (Soualhi, 2012).

However, scholars of Islamic jurisprudence put forward some principles to address the differences of opinions. While every jurist can provide his own opinion, he should not disregard other jurists' opinions, especially when they are relevant and appropriate to the situation. Jurists must follow a set of rules to deal with the differences of opinions and give preference to an opinion. In applying these rules, if a jurist finds his opinion weak, he should accept the opinion of others (Asni & Sulong, 2021).

2.4 The Concept of Necessity in Islamic Law

The Arabic terminology that denotes the concept of necessity is '*darurah*', which means a compelling need. *Darurah* is from the root word of *darar*, which means harm, and the word *idtirar* means a situation of harm where a person cannot act with free will. *Hajah* is another Arabic term related to the concept of necessity, which signifies a need (Ateeq, 2020; Zakariyah, 2012). In technical terms, Ibn Taymiyyah (2004), defined *darurah* as, "the necessity that, if unmet, would result in death, illness, or the inability to fulfill obligations is considered the same necessity as that which permits eating carrion (*maytah*)."

Ateeq (2020), defined *darurah* in two ways. Firstly, from the perspective of the universal objective of Islamic law, *darurah* means preserving five fundamental elements in human life and eliminating those factors may result in the collapse of human beings. The five fundamentals are faith, life, intellect, progeny and property.

On the other hand, a specific definition of *darurah* is a state of constraint that puts the existence of human life in danger. This situation provides a concession to the human being through legitimising some prohibited actions (Ateeq, 2020). According to Samdani (2020), the doctrine of necessity (*darurah*) requires the followers of Islamic law to defer the necessary duties in extreme cases to protect human health and security until the situation changes to normal. This doctrine prescribes that human health and security should be prioritised over all other

obligations. Using forbidden measures to preserve life in cases of danger and compulsion is legitimate.

Mohd Safian (2010) mentions that *darurah* is a situation in which an individual faces a profound fear of losing their life. However, the scope of *darurah* is not limited to life. Preserving the properties is one of the essentials. Necessity allows for the engagement of activities which are otherwise forbidden. In finance, for example, if a borrower fails to repay a loan to the creditor, the creditor has the authority to seize the debtor's property without their consent. Regarding the legality of *darurah*, Mohd Safian (2010) states that six verses in the Quran address the circumstances of necessity.

3. METHODOLOGY

The objective of this study is to analyse the fatawa that were issued for Muslims residing in non-Muslim countries. The study focuses on two areas: (1) it explores fatawa permitting conventional home finance in the case of no other option, and (2) the permissibility of conventional insurance in the case of no other option. Given the study's objective, a qualitative approach was adopted where online and library resources were used, focusing on websites of fatawa-issuing organisations from non-Muslim countries. Many of these sites have searchable fatawa databases. These organisations included:

- a. Fiqh Council of North America (<http://fiqhCouncil.org/fataawah/>)
- b. European Council for Fatwa and Research (<https://www.e-cfr.org/european-council-fatwa-research/>)
- c. Darul Ifta Birmingham, UK (<https://daruliftabirmingham.co.uk/>)
- d. Darul Ifta, Darul Uloom Deoband – India (<http://www.darulifta-deoband.com/>)
- e. Darul Iftaa, Mahmudiyyah, South Africa (<https://daruliftaa.net/fatawa/>)
- f. Darul Ifta, Jamia Madinatul Uloom, Trinidad (<http://fatwa-tt.com/>)
- g. Darul Ifta, Al Misriya (<http://www.dar-alifta.org/Foreign/Fatawa.aspx>)
- h. The Muslim Judicial Council, South Africa (<https://mjc.org.za/category/fatwa/>)
- i. Islamic Religious Council of Singapore (<https://www.muis.gov.sg/officeofthemufti/Fatwa>)
- j. ISRA (<https://ifikr.isra.my/fatwa>)

The above-mentioned *fatawa* websites were selected based on their established credibility, accessibility and relevance to the study's objectives. It was beyond the scope of this study to cover all the non-Muslim countries. We have

prioritised the most popular and searchable *fatawa* databases.

After collecting the *fatawa*, they were analysed based on qualitative content analysis. This method was suitable for this study because the qualitative content analysis is generally observational and descriptive (Elo & Kyngäs, 2008). The analysis focused on the patterns of the scholars' opinions and the differences among the scholars.

4. RESULTS & DISCUSSION

4.1 *Fatwas that Permit Mortgage-Based Home Financing*

Shelter is one of the basic needs for human survival. After food and clothing, it is the next essential thing that a human being needs. One can rent a house or buy one based on one's financial condition. Although it is debatable, sometimes, situations make it very important that one buys their own home for the benefit of the family, especially in North America. It is more of a need (*hajah*) than an extreme necessity (*darurah*).

Fiqh Council of North America issued a *fatwa* on 19th November 1999, which allowed the purchase of a house by Muslims in America and Canada with conventional mortgages. In its *fatawa* dated 30th October 1990, the European Council of Fatwa and Research did the same. Darul Uloom Debband, India, in its *fatawa* (810/651/B1434), stated, "If it is very hard to buy or build home in non-Muslim countries and if it is also difficult to get it on rent then in such compulsion it is allowable to buy interest-based mortgage house."- Darul Ifta Misriya has also allowed buying a house using a conventional mortgage. Almost all the *fatwas* used 'necessity' as the basis for permissibility for the *fatawa* (please see appendix A for details of these *fatawa*). The details of *fatawa* from the European Council for Ifta' and Research (ECFR) are discussed below to analyse the basis of their ruling.

4.2 *Analysis of ECFR Fatawa on Home Financing*

After holding deliberation in its fourth ordinary session, which was convened in the city of Dublin, Ireland, 18-22 Rajab 1420 / 27-31 October 1999, the European Council for Ifta' and Research issued resolution 2/4: "The ruling on buying homes via usurious bank mortgages for Muslims outside the Islamic countries" following are the details about the deliberations.

The ECFR discussed in detail several papers concerning the purchasing of mortgages and made the following observations:

- i. The Council stressed the gravity of interest-based transactions by stating, *“usury is forbidden. It is a major sin and is one the seven gravest ones. Those who commit it are considered as being waging war against Allah (swt) and His Prophet (pbuh). In this vein, the Council supports what has been decided by Fiqh Councils throughout the Muslim World that bank interests are usury.”*
- ii. The Council urged the Muslim community to do its utmost to seek Islamic alternatives, such as Murabaha (sale at a profit), from financial institutions. The Council called upon Islamic organisations throughout Europe to enter negotiations with European banks to find formulas that are acceptable to the Muslim buyer.

In its *fatawa* council stated, *“In the light of evidence and juristic considerations, see no harm in buying mortgaged houses if the following restrictions are strictly observed:*

- a) The house to be bought must be for the buyer and his household.*
- b) The buyer must not have another house.*
- c) The buyer must not have any surplus of assets that can help him buy a house by means other than mortgage.”*

According to ECFR communique, this *fatwa* was based on two primary juristic considerations:

“The first premise is the principle that “Necessities permit the forbidden.” This is a principle agreed upon, derived from the texts of the Qur’an in five places, including the saying of the Exalted in Surat al-An’am, “He has explained to you what He has prohibited for you, except that to which you are forced by necessity,” His saying in the same surah after mentioning the types of food prohibited, “Whoever is forced by necessity, without transgressing or exceeding the limits, then your Lord is Oft-Forgiving, Most Merciful”

As discussed below, almost all the *fatawa* that permit interest-based mortgages use the above-mentioned ‘*darurah*’ (extreme necessity) argument as a justification. It should be pointed out that although the council has relied on the principle of necessity for home financing, they specifically mention that it should be used for such and nothing else; as they put it, *“the extent of what is permitted by necessity is determined according to the extent of the necessity”* so, this permission is restricted to the category of people who are in real need for a house. However, the *fatwa* does not cover taking up a mortgage to buy a house for commercial reasons or for purposes other than owning a house for those who do not have one.

The second reason given by EFCR for the permissibility is unique to its *fatawa*, and the author did not find mention of this reason in any other *fatawa*. The

fatawa states, “The second premise: This is the position of Abu Hanifah and his companion Muhammad b. al-Hasan al-Shaybani – and it is the position according to which *fatwa* is issued in the Hanafi madhhab – as well as that of Sufyan al-Thawri and Ibrahim al-Nakh'i, being also one of the narrations from Ahmad and preferred by Ibn Taymiyyah, as stated by some Hanbalis, of the allowability of dealing in *riba* and other Islamically-invalid contracts between Muslims and others in *dar al-harb*. They have evidence for this position which are mentioned by Imam al-Tahawi and others, but there is not enough space here to mention these.” Since the *fatawa* pertains to people who reside in Europe, they claim that this justification is applied to the *fatawa*. The argument they have used appears in Al-Marghinani's “The Hedaya”, which states: “Usury cannot take place between a Muslim and hostile infidel, in a hostile country – This is contrary to the opinion of Aboo Yoosaf and Shafei, who conceive an analogy between the case in question and that of a protected alien in a Muslim territory. The arguments of our doctors upon this point are twofold. First, the Prophet has said “There is no usury between a Muslim and a ‘hostile infidel, in a foreign land.” – Secondly, the property of a hostile infidel being free to the Muslims, it follows that it is lawful to take it by whatever mode may be possible, provided there be no deceit used. – it is otherwise with respect to a protected alien, as his property is not of neutral nature, but sacred, because of the protection that has been afforded to him.” (Al-Marghinani 2013)

There were some disagreements about the above *fatawa* from some scholars who sit on the ECFR board. They published their opinion in al-Da'wah magazine no. 1726, dated 13 Shawwal 1420 / 20th January 2000, p. 26, under the heading, “Members of the European Council for Ifta' and Research: We did not agree with the *fatwa* which permits *riba* for buying property.

They objected to ECFR's position about Hanafi position on dealing with non-Muslims in *Riba*. According to them, “This situation is not consistent with the Hanafi position, for the preferred view with them is that dealing with *riba* in *dar al-harb* is correct only when the land is actually a land of war, the Muslim is receiving rather than giving – as preferred by the Hanafi analysts such as al-Kamal ibn al-Humam in *Fath al-Qadir* and Ibn 'Abidin in *Radd al-Muhtar* – and that the transaction with the *harbi* takes place in *dar al-harb* with mutual agreement.”

In their overall disapproval, the scholars said: “The undersigned view that buying houses via usurious loans in Europe is neither dictated by necessity nor required by a need which is treated like necessity. We view that this route is prohibited under the Shari'ah, and it is not correct to take it unless the person cannot find a house to accommodate him even via appropriate renting, he does not have enough money to buy such a home, he cannot find somebody who can give him an interest-free loan, he cannot find another shari'ah-compliant way to avoid mortgage-based home-buying, e.g. the *murabahah* transaction where there is an increase in price in return for an increase in

the term of payment. Furthermore, the home that he buys must not exceed the limits of need, such as its rooms and amenities being more than he needs or that it has advanced features which require a large amount beyond his need."

Al-Sawi (2001), in a scholarly paper, debated arguments by scholars of EFCR, starting with their position on Riba in dar-ul-harb. According to Sheikh, *"The Hanafi position in this issue is opposed by the majority position that the prohibition of riba does not change through a change in place, for riba is prohibited on every land and under every sky. Hence, it is not lawful for a Muslim to deal in riba with harbis, whether in paying or receiving."* (Al-Sawi, 2001).

4.3 Fatwas that do not Permit Mortgage Based Home Financing

Islamic Fiqh Academy in its resolution 50/1/6, which was passed in its sixth session held in Jeddah, KSA 14-20 March 1990, had resolved that is not permissible to use mortgage-based loan to finance purchase of a house. The ruling says: *House is a basic human need. This need should be fulfilled through legitimate means by lawful (halal) money. The method of advancing loans on interest adopted by real estate or housing banks or other financial institutions is prohibited under Shari'a, no matter how high or low the interest rates may be, because this method is based on Riba (usury) transaction."* Darul Ifta, Jamia Madinatul Uloom, Trinidad also do not allow mortgage-based loans for home financing. They encouraged renting if one cannot afford a house rather than buying it on an interest-based loan from a bank.

Monzer Kahf also believes it is not permissible to get a mortgage-backed loan, especially when an alternative is available. In an answer to a question from a Canadian Muslim, he had replied, *"You should try the Islamic organisations and companies in Canada. There are several, especially since your finances are for a relatively short term. There is the Islamic Housing Cooperative, the MSA housing Company, and several others. I am sure you should be able to find one of these to finance you for 2-3 years. In fact, I do not see a pressing necessity in your case. I, therefore, would not suggest to you the application of the Fatwa that permits using an interest-based mortgage in case of not finding suitable Islamic finance to buy a house."* (Kahf 2016)

Mufti Arshad Ali of Darul Iftaa, Jamia Madinatul Uloom, Trinidad also disapproves of the interest-based loan for purchasing a house. He quotes relevant verses from the holy Quran about *riba* for his opposition (Please see Appendix C for details). It can be summarised from the discussion above that mortgage-based home financing is primarily allowed under the concept of *darurah* (necessity), where no *Shariah*-compliant alternatives are available. However, institutions like EFCR and Fiqh Council of North America impose

conditions that purchasing houses through non-Shariah complaint loans is allowed when there is no surplus of assets, the house is for personal use, and there are no feasible renting options. Nevertheless, a group of scholars do not permit conventional mortgage financing under any circumstances.

4.4 *Fatawa about Insurance*

Insurance has always been debatable since conventional insurance, as practised today, did not exist during the Prophet (pbuh)'s time. The concept has not gained complete agreement from scholars on whether it is permissible (*halal*) or prohibited (*haram*). Monzer Kahf, in one of his answers to a query, has explained the issue succinctly, *"In the circles of contemporary Shari'ah scholars, there are three opinions about life insurance, and for that matter all types of insurance too. They all recognise that it is a new contract not known in the history of Fiqh. A minority considers it haram and it recruits all kinds of argument against it including Riba, gambling, Gharar and speculation on the will of Allah. This view does not carry much weight. The second view is that it contains Gharar because no one knows whether the liability of the insurer (the company) will ever materialise nor when it will, if ever. This is a serious Gharar that led to a major defect in the contract. It is therefore forbidden (more to come on this opinion)."*

As for the third opinion, he presented Shaikh Mustafa al Zarka's opinion, where Sheikh Zarqa argued that the *Gharar* in the insurance contract is remedied by the fact that it is a contract based on overwhelming statistical knowledge and the application of the theory of probability. There is no *Gharar* on the part of the insurer. However, the insurance contract is permissible with two conditions: it contains no *riba* clause, and its subject (insured thing) must be legitimate. These two conditions rule out regular fixed-return life insurance because the policy's value is the outcome of investment premiums at a compounded interest rate (while variable-return life is permissible if the funds are invested in *Shari'ah*-approved stocks or mutual funds). They also rule out insuring a prohibited activity. (Kahf 2002)

As for car insurance, it has been permitted by most scholars. The essence of the permissibility of automobile insurance is summarised by the following quote from one of the rulings.

"The fatwas of the majority of scholars in fiqh councils and fatwa organisations forbid commercial insurance as it exists today in most countries of the world, if it is optional and no one is obliged to purchase it. But if it is compulsory insurance and one has no choice, then it is permissible to take out car insurance, for example, and the sin is on those who forced others to do it, based on the principle of "necessities which make forbidden things permissible". But the person who is forced to take out car insurance,

for example, should not take more than he paid, if the company compensates him for harm suffered, based on the principle of “necessity should be properly estimated (without exaggeration)”. The Muslim should strive for the sake of his religious commitment and honour and keep away from haraam things or that which may be haraam, as mentioned in the hadeeth narrated by al-Nu’maan ibn Basheer: “That which is halaal is clear and that which is haraam is clear, and between them are doubtful matters which many people do not understand. Whoever guards against the doubtful matters will protect his religious commitment from shortcomings and will protect his honour from slander, but whoever falls into that which is doubtful will fall into that which is haraam ...” Narrated by al-Bukhaari (2051) and Muslim (1599). And Allaah knows best.” Following is a discussion of some insurance-related fatwa.

European Council for Fatawa and Research took up the issue of insurance-related issues in its 6th session. The Council discussed the research, and the papers presented concerning the issue of insurance and how it is dealt with in Europe. It reviewed the publications of the Fiqh Academies, conferences and scientific forums on this matter and arrived at the following ruling about business insurance:

“Taking into consideration the resolutions issued by some Fiqh Academies that prohibit business, there are cases and environments that require solutions to deal with special situations and meet their needs, particularly the case of Muslims in Europe where business insurance is prevalent and where people are badly in need of benefiting by it to ward off the risks they are largely exposed to in daily life in all its forms, and in the absence of the Islamic alternative (i.e. the cooperative insurance) and the difficulty to find it nowadays.”

Council gave the fatwa permitting business insurance in the following and similar cases:

- a. The cases of legal compulsion, such as insurance on cars, machinery and equipment for employees and officials (social security and pension), and some cases of health insurance, study insurance, etc.
- b. Cases where insurance is required to ward off critical situations and severe difficulty and where the risk in the system of business insurance is excused. Following are some examples:
 - i. Insurance on Islamic institutions such as mosques, centres, schools, etc.
 - ii. Insurance on cars, machinery, equipment, houses, professional and commercial establishments to avoid difficult perils, such as fires, theft and the impairment of various facilities.
 - iii. Health insurance is used to avoid the high costs that the insured and his family members may have to pay in the absence of free, slow, or technically low-level health coverage.

In its *fatawa*(964/866/SN=8/1438) Darul Uloom Deoband, India addressed the permissibility of government-mandated automobile insurance. The *fatawa* state: *“You can take the insurance policy which is legally mandatory on purchasing the vehicle, but if sometimes unfortunately the vehicle meets an accident then you may take only as much amount from your insurance policy as you have deposited in installments, but if you get more then since this addition is interest hence it shall not be lawful for you to use it in your personnel need rather it shall be wajib to give it to the poor and needy ones without the intention of reward.”* In essence, the *fatawa* says that it is permissible to get car insurance, but in case of an accident, the number of claims should not exceed the total premiums paid.

Mufti Mohammed Tosir Miah echoed a similar opinion and Maulana Javed ibn Nazir Kachhalia of Darul Ifta Birmingham when in their answer to a question they replied: *“Insurance (any category or type) is not permitted because there is an element of gambling and also interest (riba), but in some circumstances to take up insurance (in this case car insurance) in some places and countries is obligatory, therefore, will be permissible”*.

The Islamic Fiqh Academy, in its Second Session, held in Jeddah, Saudi Arabia, from 10 to 16 Rabiul Thani, 1406 H. (corresponding to 22 - 28 December 1985) ruled on ‘Insurance and re-insurance’. It was resolved that *“The commercial insurance contract, with a fixed periodical premium, which is commonly used by commercial insurance companies, is a contract which contains major element of risks, which voids the contract and therefore, is prohibited (haram) according to the Shariah.”* The Academy encouraged the Muslim countries to work on establishing cooperative insurance institutions and cooperative entities for re-insurance for the benefit of the *Ummah*. As mentioned in the discussion above, Sheikh Zaraqa disagreed with this *fatawa*.

It can be summed up from the above discussion that scholars allowed mandatory insurance (e.g., car insurance) under legal compulsion or extreme financial necessity with the condition that the insurance claims do not exceed the premiums paid. Scholars have emphasised that the case of *darurah* (necessity) should be genuine. Besides, *Shariah*-compliant alternatives should be prioritised whenever they are available.

5 CONCLUSION

In conclusion, Muslims in non-Muslim majority countries face daily challenges in leading an observant lifestyle. The religious institutions issuing *fatwas* in response to those challenges have considered these difficulties. Regarding mortgage loans, the fatwa permits it in the case of extreme necessity (*darurah*), defined as situations where individuals are not able to rent a house,

purchase a property with a cash price or secure an Islamic mode of financing. For conventional insurance, scholars allow it when it is a necessity, often mandated by the governments, with the condition that the insured person should not claim more than what he paid in premiums.

Beyond the legal permissibility of certain financial practices, these fatawa also carry broader social and psychological implications for Muslim minorities. By legitimising selected conventional financial tools as necessary, religious authorities provide a framework that helps Muslims balance fidelity to Islamic principles with the practicalities of life in pluralistic societies. However, such concessions may also influence evolving norms of halal and haram, possibly leading to more flexible or lenient interpretations over time. This dynamic requires ongoing scholarly vigilance to ensure that *darurah* is not misused as a blanket justification.

It is recommended that Muslims in non-Muslim majority countries adhere to the conditions outlined in these fatwas while considering purchasing a house through a mortgage or buying insurance. Muslims should exercise caution in determining whether their situation constitutes a necessity (*darurah*). Pertaining to this, consulting a religious scholar is advised to confirm whether one's situation qualifies as a necessity (*darurah*). Scholars unanimously agree that *darurah* must be a genuine, present extreme need and not an imagined one.

In the meantime, it is recommended that Islamic communities in non-Muslim majority countries make their utmost effort to establish Islamic mortgage and Islamic insurance institutions to avoid forbidden practices. Additionally, Islamic financial institutions should consider expanding their outreach to non-Muslim countries to serve Muslim customers better. Islamic digital financial institutions might also consider providing cross-border financial services to Muslim clients.

This study is limited to analysing the *fatawa* related to mortgage and insurance. Therefore, further study could explore other Muslim financial needs, i.e., foreign exchange, credit card, student loans, etc. Moreover, in-depth research should be conducted on the parameters of necessity (*darurah*) in assessing non-halal financial services in the context of specific non-Muslim countries.

6. ACKNOWLEDGEMENT

We would like to acknowledge that this research was self-funded and did not receive any external financial support. We thank our colleagues for their insightful suggestions during the preparation of this article.

7. REFERENCES

- Al-Marghinani, B. D. (2013). "Of Ribba or Usury". In C. Hamilton (Trans.), *The Hedaya, or Guide: A Commentary on the Mussulman Laws* (Cambridge Library Collection - p. 500 – 501). Cambridge: Cambridge University Press.
- Al-Sawi, S. (2001) "A Polite Reconsideration of the *Fatwa* Permitting Mortgages for Buying Homes in the West"; <https://unity1.files.wordpress.com/2009/06/analysis-of-fatwas-on-mortgages.pdf>
- Al-Shahrazuri, I. S. (1986). *Adab Al-Mufti wa Al-Mustafti*. Al-Madinah al-Munawwarah: Maktabat al-Ulum wa al-Hikam.
- Arabi, O. (1999). Early Muslim Legal Philosophy: Identity and Difference in Islamic Jurisprudence. UCLA: G E von Grunebaum Center for Near Eastern Studies. <https://escholarship.org/uc/item/7c8253bt>
- Arifin, S., Bachtiar, H., Fuad, A. N., Tongat, T., & Wahyudi, W. (2019). Minority Muslims and freedom of religion: Learning from Australian Muslims' Experiences. *Indonesian Journal of Islam and Muslim Societies/Indonesian Journal of Islam and Muslim Societies*, 9(2), 295–326. <https://doi.org/10.18326/ijims.v9i2.295-326>
- Asni, F., & Sulong, J. (2021, January 18). The mura'ah al-khilaf and ma'alat method in *fatwa* decisions: its application for *fatwa* coordination related to conditional hibah in Malaysia. *International Journal of Islamic and Middle Eastern Finance and Management*, 14(4), 641–654. <https://doi.org/10.1108/imefm-05-2018-0181>
- Ateeq, M. M. (2020). A critical appraisal of necessity (darūrah) in Islamic law with reference to medical fatwas (Doctoral dissertation, University of Birmingham).
- Black, A., & Hosen, N. (2009). *Fatwas*: Their role in contemporary secular Australia. *Griffith Law Review*, 18(2), 405–427. <https://doi.org/10.1080/10383441.2009.10854648>
- Caeiro, A. (2011). The making of the *fatwa*. *Archives De Sciences Sociales Des Religions*, 155, 81–100. <https://doi.org/10.4000/assr.23312>
- Duderija, A., & Rane, H. (2019). *Islam and Muslims in the West*. Cham: Palgrave Macmillan.
- Ekinci, E. B. (2015). Myths and reality about the printing press in the Ottoman Empire. *Daily Sabah*. <https://www.dailysabah.com/feature/2015/06/08/myths-and-reality-about-the-printing-press-in-the-ottoman-empire>
- Elo, S., & Kyngäs, H. (2008). The qualitative content analysis process. *Journal of Advanced Nursing*, 62(1), 107–115. <https://doi.org/10.1111/j.1365-2648.2007.04569.x>

- Fakhrunnas, F. (2018). *Fatwa on the Islamic Law Transaction and Its Role in the Islamic Finance Ecosystem*. *Al Tijarah*, 4(1), 42. <https://doi.org/10.21111/tijarah.v4i1.2372>
- Hassan, O. M. (2023). The Change of Time and Place and Its Impact on The Change of *Fatwa*. *Russian Law Journal*, 11(8s). <https://doi.org/10.52783/rlj.v11i8s.1252>
- Ibn Qayyim, M. I. A. B. (1991). *I'lam al-muwaqqi'in 'an rabb al-'alamin*. Beirut: Dar al-Kutub al-Ilmiyyah.
- Ibn Taymiyyah, A. (2004). *Majmū' al-Fatāwā*. Al-Madīnah al-Munawwarah: Majma' al-Malik Fahd li-Ṭibā'at al-Muṣḥaf al-Sharīf.
- Kahf, M. (2002). *Fatawa On Insurance*. Retrieved 16th November, 2023, from http://monzer.kahf.com/fatawa/2000-2002/FATAWA_INSURANCE.pdf
- Kahf, M. (2016). *Fatawa Mortgage 2016*. Retrieved 16th November, 2023, from http://monzer.kahf.com/fatawa/2016/FATAWA_MORTGAGE_2016.pdf
- Khader, B. (2019). Muslims in Europe: The Construction of a “Problem” | OpenMind. <https://www.bbvaopenmind.com/en/articles/muslims-in-europe-the-construction-of-a-problem/#:~:text=The%20vast%20majority%20of%20these,difficult%2C%20dirty%20and%20dangerous%E2%80%9D>
- Laldin, M. A., Khir, M. F. A. & Parid, N. M. (2012). *Fatwas in Islamic banking : a comparative study between Malaysia and Gulf Cooperation Council (GCC) countries*. Research paper no. 31. International Shari'ah Research Academy for Islamic Finance, Kuala Lumpur.
- Mohd Safian, Y. H. (2010). *Necessity (darura) in Islamic Law: A study with special reference to the Harm Reduction Programme in Malaysia* (Doctoral dissertation, University of Exeter).
- Papademetriou, D. G., Alba, R., Foner, N., & Banulescu-Bogdan, N. (2016). *Managing religious difference in North America and Europe in an era of mass migration*. Migration Policy Institute.
- Rusli, R., Hasyim, M. S., & Nurdin, N. (2020). A New Islamic Knowledge Production and Fatwa Rulings: How Indonesia's Young Muslim Scholars Interact with Online Sources. *Journal Of Indonesian Islam*, 14(2), 499. <https://doi.org/10.15642/jiis.2020.14.2.499-518>
- Samdani, M. J. (2019). Doctrine of Necessity (In Islamic Jurisprudence). *Global Journal of Human-Social Science*, 19(A12), 53-58.
- Soualhi, Y. (2012). Bridging Islamic Juristic Differences in Contemporary Islamic Finance. *Arab Law Quarterly*, 26(3), 313–337. <https://doi.org/10.1163/15730255-12341235>
- The Economist. (2019). The 30m Muslims living in Europe and America are gradually becoming integrated. (2019, 14th February). Retrieved 10th June, 2024, from <https://www.economist.com/special-report/2019/02/14/the-30m-muslims-living-in-europe-and-america-are-gradually-becoming-integrated>

Zakariyah, L. (2012). Legal Maxims and Islamic Financial Transactions: A Case Study of Mortgage Contracts and the Dilemma for Muslims in Britain. *Arab Law Quarterly*, 26(3), 255–285. <https://doi.org/10.1163/15730255-12341240>

Disclaimer

The views expressed in this article are those of the author. Journal of Fatwa Management and Research shall not be liable for any loss, damage or other liability caused by / arising from the use of the contents of this article.