

THE ACTUALIZATION OF MUI FATWA ON POSITIVE LAW AS ISLAMIC LEGAL OPINION IN INDONESIA

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Abstract: Legal opinion in Islam will discuss issues related to religious law such as fatwas. In Indonesia, there is a fatwa-making body called the MUI (Indonesian Ulema Council) which was established on July 26, 1975. This study uses the library research method by reviewing several libraries and comparing them with other literacy to find the right research results. The results of the study indicate that fatwas have an important role by becoming several national laws in the realm of Islamic economics. This is proven in the Supreme Court Regulation No. 2 concerning the Compilation of Sharia Economic Law (KHES), in addition to that regarding Islamic banking, for example PBI No. 9/19/PBI/2007. In addition, regarding sharia principles, the finance minister asked the MUI fatwa as the basis for issuing State Sharia Securities (SBSN).

Keywords: Fatwa, DSN-MUI, Legal Opinion, Law.

Abstrak: Ketentuan hukum dalam Islam akan membahas masalah-masalah yang berkaitan dengan hukum agama seperti fatwa. Di Indonesia terdapat badan pembuat fatwa bernama MUI (Majelis Ulama Indonesia) yang berdiri pada tanggal 26 Juli 1975. Penelitian ini menggunakan metode penelitian kepustakaan dengan meninjau beberapa perpustakaan dan membandingkannya dengan literasi lain untuk menemukan hasil penelitian yang tepat. Hasil kajian menunjukkan bahwa, fatwa memiliki peran penting di beberapa hukum nasional

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khususnya dalam ranah ekonomi Islam. Hal ini dibuktikan dalam Peraturan Mahkamah Agung No.2 tentang Kompilasi Hukum Ekonomi Syariah (KHES), selain tentang perbankan syariah, misalnya PBI No.9/19/PBI/2007. Selain itu, terkait prinsip syariah, Menkeu meminta fatwa MUI sebagai dasar penerbitan Surat Berharga Syariah Negara (SBSN).

Kata kunci: Fatwa, DSN-MUI, Ketentuan Hukum, Hukum.

Introduction

Humans are social creatures, of course, they will need each other, but relationships fellow human beings who are not based on the existence of law will make humans act as they wish. The various problems among the people make the state present with laws to regulate and force humans to obey the law so that the social life of the community will be more organized and orderly.

Indonesia, which was a colonial state belonging to the Netherlands in 1945, declared independence, after the declaration of independence, national legal politics became an obligation.¹ From the beginning of the independence of the Indonesian nation until now, the government has always sought legal reform in accordance with the culture and society that developed

¹Oksep Adhayanto, "Perkembangan Sistem Hukum Nasional", *Jurna Ilmu Hukum*, Vol.4, No.2, 2014, p. 214.

in the archipelago. With the development of diverse societies, the problems in Indonesia are also diverse, but it is possible that similar cases always occur. So with this, legal experts and legal practitioners assist the development of law by making a legal opinion for a case.

Fatwa as legal opinion in Islam has developed quite a bit because the renewal of Islamic law in Indonesia is quite slow when compared to Middle Eastern countries. This is certainly caused by several factors, one of which is the religious paradigm which is always clashed with the state paradigm. However, this does not make the development of fatwas stagnant, but efforts to actualize Islamic law into Indonesian legal politics continue to be carried out. With the context of this problem, the author intends to examine the position of the fatwa as an Islamic legal opinion, then how the developments that have occurred until now and how the effort to actualize it in positive law. Article 1 paragraph 3 of the 1945 Constitution of the Republic of Indonesia determines that the State of Indonesia is a State of Law, this is proven that people in their lives in Indonesia must rely on the main law, *iusconstitutum* (the law currently in force) as an important basis for society. As well as in actualization, facts that occur in Indonesian

society that make fatwas the main basis and sometimes there are also those that override positive law.

This is what triggers a legal confusion in the legal system in this country. It is feared that the fatwa will attract politicians to be used in the wrong direction. The case that happened in the 2009 general election, the public was faced with the election of members of the legislature and the election of the president. Many people were white (Golput) or did not vote for one candidate at that time.² This has caused a lot of unrest among political party activists. This unrest was felt by the PKS (Partai Keadilan Sejahtera) who urged the Indonesian Ulema Council (MUI) to issue its fatwa, so that it is forbidden for people who abstain, on the grounds that it will cause harm to democracy. In the end, the MUI issued a fatwa on the prohibition of abstentions on February 13, 2009. Currently, people have a tendency to lay down a fatwa.

In the Indonesian legal system, fatwas are not considered a source of material law, which has no legal validity as a solution to the problems of the Muslim

²CNN Indonesia, *MUI Laruskan Soal Fatwa Golput Haram*, (<https://www.cnnindonesia.com/nasional/20190328113845-32-381395/mui-luruskan-soal-fatwa-golput-haram/>), diakses pada 11 Agustus 2022)

community in Indonesia. Meanwhile, Law Number 12 of the Year concerning the Establishment of Legislation does not accommodate fatwas as a source of law. because so far the MUI study has only focused on discussing the arrangement of the MUI, the institutional form of the ulama.

The problems of Islamic law that occur in the Muslim community in Indonesia are developing dynamically and complexly, especially their muamalah activities, so that one solution is the MUI fatwa. but when fatwas are faced in the context of state administration, the position of fatwas is not as strong as positive laws that have a place in the legal system, fatwas are also considered weak in responding to legal problems faced by state power. The Muslim community in Indonesia, apart from being submissive and obedient to Islamic law, is also subject to the laws in force in Indonesia. so that with the actualization of the MUI fatwa as a positive law from optimizing the legal opinion of mujtahid into a positive law version of Islam that is legal to apply for the Muslim community to remain in the corridor of sharia.

In researching a complex problem requires a large carrying capacity. so that researchers must adjust their abilities by taking more specific parts to be studied. That

is, the problem that becomes the focus of research must be formulated first. The problem formulation of this study is the dynamics of the role and function of the Fatwa as an Islamic legal opinion and the actualization of the MUI fatwa as positive Islamic law for the Muslim community in Indonesia.

Research methods

The type of research that will be used by library research. Library research is a research method by studying various similar literatures to find a theoretical basis about a problem to be studied which is then used as a reference to produce a conclusion that desired or the researchers conducted library data collection.

While in library research there are 4 activities that need to be carried out to find the right results, as follows:³

1. Created all research results on a problem that comes from the previous literature.
2. Collaborating on all research results with new theories.

³M. Zed, *Metode Penelitian Kepustakaan* (Jakarta: Yayasan Obor, 2008), p.14

3. Analyzing reference sources and literature regarding the strengths and weaknesses of each content discussion.
4. Criticize and provide a new idea to add to the shortcomings and collaborate with the results of previous research.

Discussion

Mumung Mulyati's research journal entitled, "Contribution to the Development and Application of Islamic Law in Indonesia",⁴ discusses the Indonesian Ulema Council (MUI) as an institution that issues fatwas and contributes to guiding the lives of Muslim communities in implementing Islamic law. By using a qualitative research method with a library approach by taking the theory of shahadah and the application theory of taqin al-ahkam, this study resulted in a conclusion that the MUI's contribution was actualized in two things, namely in the development and application of Islamic law in Indonesia and secondly, some of the MUI fatwas have already transformed into a law, government regulation and so on.

⁴Mumung Mulyati, "Kontribusi Mui Dalam Pengembangan Dan Penerapan Hukum Islam Di Indonesia," *Al-Mashlahah Jurnal Hukum Islam dan Pranata Sosial* 7, no. 01 (September 1, 2019): 83-100, <https://doi.org/10.30868/am.v7i01.547>.

In a study conducted by Ja'far Baehaqi, "The Paradox of the Fatwa of the National Sharia Council of the Indonesian Assembly in Sharia Banking Law Regulations and Alternative Solutions".⁵ explained the juridical problem of actualizing the DSN-MUI fatwa in sharia banking regulations. So the results of this study found that the DSN-MUI fatwa was accepted as one of the operational bases of Islamic banking. However, even so, the regulatory framework is felt to create an uncertainty that requires granting a mandate, making the DSN-MUI a state institution, and transforming the DSN-MUI fatwa into the prevailing laws and regulations in Indonesia.

Mean while, Muhammad Ibnu Afrelian's research with the title, "Legality and Authority of the Fatwa of the National Sharia Council of the Indonesian Ulema Council in Operations of Islamic Financial Institutions",⁶ explains about Islamic financial institutions that require laws and regulations and the fatwa of the Indonesian Sharia Council of the Indonesian Ulema Council to ensure the implementation of

⁵Ja'far Baehaqi, "Paradoks Fatwa Dewan Syari'ah Nasional Majelis Ulama Indonesia Dalam Regulasi Hukum Perbankan Syari'ah Dan Alternatif Solusinya," n.d., 24.

⁶Muhamad Ibnu Afrelian and Imahda Khoiri Furqon, "Legalitas Dan Otoritas Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Dalam Operasional Lembaga Keuangan Syariah," *Jurnal Ilmiah MizanI: Wacana Hukum, Ekonomi, Dan Keagamaan* 6, no. 1 (August 30, 2019): 1–12, <https://doi.org/10.29300/mzn.v6i1.2195>.

the principles. sharia in Islamic financial institutions. Fatwa is the opinion of scholars that can be used and ignored.

In Soleh Hasan Wahid's research entitled, "The Dynamics of Fatwa from Classical to Contemporary, Overview of the Characteristics of the Sharia Economic Fatwa of the Indonesian National Council (DSN-MUI)".⁷ This study discusses how the characteristics of fatwa change from classical to contemporary fatwas. If in the past the fatwa was an answer to a question about a problem, the authors found that there was a development where now the fatwa is an active response of DSN-MUI in seeing the development of problems in society. The next change is in the format for the preparation of a fatwa which is the same as the applicable laws and regulations.

In the research of Ibn Elmi, et al entitled "The Fatwa of the Indonesian Ulema Council as a Solution to the Problems of Muslims in Indonesia"⁸ which explains that the position of the fatwa on the concept of Islamic law has a high position.

⁷Soleh Hasan Wahid, "Dinamika Fatwa Dari Klasik ke Kontemporer (Tinjauan Karakteristik Fatwa Ekonomi Syariah Dewan Syariah Nasional Indonesia (DSN-MUI)," *YUDISIA : Jurnal Pemikiran Hukum dan Hukum Islam* 10, no. 2 (October 22, 2019): 193–209, <https://doi.org/10.21043/yudisia.v10i2.5831>.

⁸Ibnu Elmi Achmat Slamet Pelu and Jefry Tarantang, "Fatwa Majelis Ulama Indonesia Sebagai Solusi Permasalahan Umat Islam Di Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 14, no. 2 (December 3, 2020): 307–16, <https://doi.org/10.24090/mnh.v14i2.3927>.

Fatwas are seen as a solution in solving legal developments that are not accommodated by texts. it could be from a sociological value, indicating that fatwas have a strong and binding position in Islamic law. and the existence of the fatwa of the Indonesian Ulema Council in answering the problems of the people can be determined in two aspects.

The first aspect, fatwas in the perspective of Islamic legal authority is binding in substance sociologically. secondly, fatwas in a hierarchical perspective on the values of laws and regulations, legally formally, do not have any position in the level of legal norms. However, this is in accordance with the constitutional basis of the Republic of Indonesia as described in Article 29 of the 1945 Constitution which guarantees the realization of the fulfillment of all Islamic laws for Muslims in Indonesia. In previous studies, many have discussed the position of the MUI fatwa in Islamic law in Indonesia.

However, the concept of acceptable practice in accordance with the actualization in the community still needs to be explored in more depth and detail to be able to determine the decisions of legal experts in providing legal protection and virtue in society. because it is not necessarily the use of articles used to decide the same case, this is because it is necessary to identify

sociological values, and hierarchies in the use of articles with complex community problems

1. Definition of MUI Fatwa as Islamic Legal Opinion

As previously explained, legal opinion is the idea of a legal practitioner, so it is the same with Islamic legal opinion. However, Islamic legal opinion will discuss issues related to religious law such as fatwas that way, only legal practitioners who make it understand the fiqh rules that need to be used for the legal opinion.

There are several opinions regarding the definition of fatwa from several scholars. According to Sheikh Qardhawi, a fatwa is an explanation of sharia law on a phenomenon as a form of response to someone requesting the fatwa. Meanwhile, Ibn Hamdan explained that a fatwa is something that conveys the understanding and explanation of a shari'a law based on syara'. In addition, the opinion of Al-Qarafi which states that information about God's law has the nature of *mulzim* (must be followed).⁹

In Indonesia, there is a fatwa-making body called the MUI (Indonesian Ulema Council) which was established on July 26, 1975. According to scholars, the

⁹Wildan Imaduddin Muhammad, "Keberanjakan Fatwa dari *Legal Opinion* menjadi *Legal Binding* (Studi Kasus Fatwa DSN MUI Tentang Perbankan Syariah)", *Jurnal Jurisprudensi*, Vol. 11, No.2, 2019, p. 152.

concept of fatwa in Islam must be based on sources of Islamic law such as the Al-Quran and Hadith, so this should be a legal opinion. based on the Constitution. With this, it is necessary for the mufti to have the knowledge and ability to deal with these problems so that there is no mistake in giving ideas.¹⁰

The fatwas is basically not binding but there are limits of course but they can still have an impact on the social and political community so it is necessary to make a fatwa or Islamic legal opinion because there are so many Muslims who are considered laymen there are several Islamic legal bases and it is feared that they will use a legal basis that wrong for actions that are deemed not in accordance with the Shari'a.¹¹

As explained earlier, the fatwa has the position as a legal opinion and does not have the power to bind it, even so the Muslim community still needs a fatwa in determining a sharia law. The fatwa has 2 functions of restraint, namely tabyin and tawjih, for tabyin, namely to understand the public about the law that applies in the case. As for tawjih to provide enlightenment to the

¹⁰Muhammad Erfan Riadi, "Kedudukan Fatwa ditinjau dari Hukum Islam dan Hukum Positif (Analisis Yuridis Normatif)", *Jurnal Ulumuddin*, Vol.6, No. 4, 2010, p.470.

¹¹ Saifuddin, "*Legal Opinion (Fatwa)*...", p.197.

public about the law that is currently in effect.¹² Fatwa as Islamic legal opinion tries to show the correlation between positive law and Islamic law. With this fatwa is a concrete manifestation of a society. This is indicated by several things as follows:

1. Fatwa begins with a mustafti question which is then answered by a mufti in the form of a fatwa
2. Some of the fatwas are always tied to an individual or group so that it will be easier to determine a law, because this can be used as a reference
3. Several fatwas arise because there is a problem and then a fatwa is made as a form of legal assistance for Islamic problems.

2. Dynamics of MUI Fatwa Development in Indonesia

The development of fiqh in Indonesia is marked by many changes because the understanding and fatwa produced do not forget the customary context of the local Indonesians. With this, fiqh is one of the Islamic sciences that is influential in the life of a Muslim because it can be the basis for scholars to set fatwas and

¹² Muhammad Erfan Riadi, "Kedudukan Fatwa ditinjau...", p. 472.

become one of the people who increase the spirituality of the community over the laws that have been set.¹³

As an Islamic legal opinion, the fatwa has been quite developed since its inception at the MUI. A Dutch researcher named Nico. J.G conducted research on fatwas that developed in Indonesia, in his research he stated that there are 4 kinds of fatwas that have developed in Indonesia, namely traditionalist fatwas, modernist fatwas, collective fatwas, and documents such as fatwas. At the beginning of the development of the fatwa in Indonesia, it only answered questions that developed in the community, but as the times progressed, the fatwa underwent changes, now the DSN-MUI has a format that is not just an answer but is now written in the form of legislation.¹⁴

Until now, there are about 124 fatwas present in Indonesia with a fairly significant number, so it can be said that fatwas in Indonesia are experiencing development. There are several factors that may cause changes in the fatwa in its development, namely:

¹³Mohamad Rapik, "Dinamika Fikih Indonesia (Studi Atas Fatwa Majelis Ulama Indonesia tentang Lingkungan Hidup)", *Jurnal Inovatif*, Volume XII, No.II, Mei, 2019, p.45.

¹⁴Soleh Hasan Wahid, "Dinamika Fatwa ...", p. 2

1. Changes in time that cause changes in attitudes and values found in society.
2. Changes in place both problems that arise in cities and villages.
3. Changes in social conditions and society.
4. Changes in science
5. Changes in human needs
6. Changes in human abilities¹⁵

In its development, of course, the fatwa as a legal opinion in Islam has problems such as the occurrence of taqlid among ordinary people. Because some scholars oppose the occurrence of taqlid among the public because taqlid is an activity to follow someone's words and rationally, by following someone's words, generally people do not understand what they are doing without understanding the theory of truth they are doing. This is prohibited because if the fatwa is indeed wrong, the muqallid will not understand the point of error.¹⁶

An example of one of the fatwas that was present in Indonesia was the fatwa regarding the prohibition of bank interest issued by the MUI institution on January 6, 2004, but this fatwa is different from the fatwa issued

¹⁵Faridatus Suhadak, "Urgensi Fatwa dalam Perkembangan Hukum Islam" *Jurnal Syariah dan Hukum*, Vol.5, No.2, 2013, p. 191

¹⁶Faridatus Suhadak, "Urgensi Fatwa dalam...", p.194.

by Nadhlatul Ulama (NU). In the earlier fatwa issued by NU stating that bank interest is something that is doubtful (between halal and haram) and this was conveyed at the NU National Conference in Bandar Lampung 1992 when it was proposed by all members of the National Conference who were present with NU doubts. it is necessary to introduce sharia-based banking. As for the fatwa belonging to the MUI issued in 2004, it explained explicitly that bank interest is something that is forbidden, the legal difference was initiated at that time because of the conditions in 1992 that sharia banking in the archipelago had not yet been established, while in 2004 there were 3 sharia banking units and 15 business units. sharia which has 401 offices.¹⁷

During the period of better national stability (the New Order), religious issues were deemed necessary to carry out taqwin or legalization in the form of legislation so that their position was equal to the formal law prevailing in society. So that this affected the development of the fatwa itself, which at that time was

¹⁷ Muhammad Yasir Yusuf, "Dinamika Fatwa Bunga Bank di Indonesia : Kajian terhadap Fatwa MUI, Muhamadiyah, dan Nahdlatul Ulama", *Jurnal Media Syariah*, Vol.16, No.2, 2012, p. 167.

transferred to the Orientasu Institutive right within the Indonesian Ulema Council, which was called the Fatwa Giving Authority, without overriding the fatwas of the related Ormas. However, the MUI Fatwa has a strategic position and position to be chosen by the community in issuing fatwas as one of the formal institutions.¹⁸

3. Actualization of MUI Fatwa in Positive Law as a Legal Islamic Opinion in Indonesia

The actualization of Islamic teachings has always been attempted by scholars in order to answer the challenges of modernization and globalization, although in practice it is not absolute by formalizing Islamic law. In addressing contemporary problems, it is necessary for Islamic law to be used as a barometer of whether it is permissible or not to do this.¹⁹

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¹⁸Fatkhul Mujib, "Perkembangan Fatwa di Indonesia", *Jurnal Nizham*, Volume. 4, No.1, Januari-Juni, 2015, p.96.

¹⁹ Abdul Waheb, "Aktualisasi Hukum Islam terhadap Masalah-Masalah Kontemporer", *Jurnal Al-Hukama*, vol. 3, No.2, Desember 2013, p. 155.

Islamic law to be used as a barometer of whether it is permissible or not to do this.²⁰

Until now, there are several political policies regarding sharia values that fatwa is the opinion of the scholars or Islamic jurists obtained through the process of legal investigation or *ijtihad* agreed upon by the scholars which aims to find a legal certainty that is used as a guide or advice for the Muslim community in carrying out the life of the nation and state. Not only as civil law, KHES (Syariah Economic Law Compilation) which is one of the collections of provisions for muamalah transactions for the Muslim community in Indonesia, commercial compilations are also in accordance with sharia provisions. This KHES is basically not a law but can be a legal reference for the Muslim community which is an applied material law issued by the Supreme Court which has the same position and function before the law that has been ratified by law.²¹

²⁰Suyadi, "Prospek Fatwa MUI terhadap Hukum Positif di Negara Pancasila", Pengadilan Agama Purworejo, Tanggal publikasi 1 Juni 2021, <https://www.papurworejo.go.id>.

²¹May Shinta Retnowati, "The Dimensions of Legal Opinion's Role in Settlement of Civil Law Cases" 11, no. 2 (2022): 572.

This fatwa is responsive, dynamic and informative. who is responsible for the fatwa in question for the existence of community problems for which there is no legal regulation that regulates it. The rule of law put forward by Imam Ibn Qayyim al-Jauziyah that fatwas are said to be dynamic because it does not rule out the possibility that the fatwa will change as time, place, intentions and even habits change. While the fatwa is informative because it provides information as a solution related to problems that have no way out, so the fatwa here also functions to explain something that is being questioned by the Muslim community. This non-binding fatwa is not binding because the opinions of Islamic jurists are comprehensive in nature to all Indonesian people.²²

So that coercion will not occur in the context of implementing the MUI fatwa for all Indonesian people. Even though the person is requesting a fatwa, there is no obligation for him to follow or carry out the fatwa. It can be said that the special application of the Indonesian Muslim community because the legal basis used by the

²²Imaro Sidqi and Doli Witro, "Kedudukan Fatwa Majelis Ulama Indonesia (Mui) Dalam Perspektif Hukum Islam Dan Nasional: Studi Implikasi Fatwa Terhadap Masyarakat," *Nizham Journal of Islamic Studies* 8, no. 01 (May 20, 2020): 22, <https://doi.org/10.32332/nizham.v8i01.2103>.

MUI fatwa making institution cannot be separated from the Qur'an and the Sunnah of the Prophets. a.w. "As it is known that the Indonesian people are Muslim".²³ The orientation and actualization of the purpose of this country's national law is to protect the lives of all Indonesian citizens without exception. In this case, the validity of the law still adheres to the diversity of race, religion, ethnicity, and culture that Indonesia has.

Therefore, the state can accommodate the MUI fatwa into the positive version of Islamic law that applies in Indonesia, because in reality there are many Muslim communities in Indonesia. Indonesia in carrying out muamalah activities is based on provisions rather than fatwas, this can be due to avoiding falsehood and optimizing the level of benefit for the Muslim community.

That have entered the realm of national law. Even what was originally just a fatwa can turn into a national law, namely Supreme Court Regulation No. 2 on the Compilation of Sharia Economic Law, besides that regarding sharia banking, for example PBI No. 9/19/PBI/20007. In addition, regarding sharia principles,

²³Sidqi and Witro, 24.

the finance minister asked the MUI fatwa as the basis for issuing SBSN.²⁴ The fatwa that has been adopted by positive law if there is a violation of this can be a sanction. Sanctions related to the settlement of sharia disputes are contained in Article 49 of the Law on Religious Courts No. 3 of 2006 which reads "The Religious Courts aim and have the authority to examine, decide, and resolve cases at the local level. first among Muslims in the fields of: Marriage, Inheritance, Hibah, Waqf, Zakat, Infaq, Shadaqah, Sharia Economics."²⁵

Conclusion

Legal opinion is the idea of a legal practitioner, so it is the same with Islamic legal opinion. However, Islamic legal opinion will discuss issues related to religious law such as fatwas. In Indonesia, there is a fatwa-making body called the MUI (Indonesian Ulema Council) which was established on July 26, 1975. According to the scholars, the concept of fatwa in Islam must be based on sources of Islamic law such as the Al-Quran and Hadith.

The orientation of the purpose of this country's national law is to protect the lives of all Indonesian citizens without

²⁴Sidqi and Witro, 25.

²⁵Diana Mutia Habibaty, "Peranan Fatwa DSN-MUI terhadap Hukum Positif", *Jurnal Legislasi Indonesia*, Volume. 14, Nomor. 04, Desember 2017, p. 448.

exception. In this case, the validity of the law still adheres to the diversity of race, religion, ethnicity, and culture that Indonesia has. Therefore, the state can accommodate the MUI fatwa into the positive version of Islamic law that applies in Indonesia, because in reality there are many Muslim communities in Indonesia. Indonesia in carrying out muamalah activities is based on provisions rather than fatwas, this can be due to avoiding falsehood and optimizing the level of benefit for the Muslim community.

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