FATWA INSTITUTIONS IN ISLAMIC LAW

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Abstract

Fatwa is one of the products of Islamic legal thinking in the form of ijtihad of scholars who formulate a formula for legal provisions in response to questions raised regarding various aspects of law. The fatwafatwas of the Ulama have a casuistic nature and tend to be dynamic regarding problems in society that are important to know about the legal provisions of the Islamic community. These fatwafatwas are contributions to the development of Islamic law in particular and national law in general.

Keywords: fatwa, islamic law, ulama

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INTRODUCTION

Indonesia is a nation with a predominantly Muslim population, so that in the political arena in Indonesia, it is sufficient to color the life of the nation and state. Likewise, regarding fatwa institutions that grow and develop which are dominated by the fatwa institution of the Indonesian Ulema Council (MUI).

Indonesian Ulema Council is one of the fatwa institutions whose existence is recognized because MUI has intellectual human resources consisting of various scientific disciplines, both Islamic sciences and general sciences, such as medicine. Medical science is used in researching and determining the levels of food containing alcohol, so that a food and or drink can be declared halal or unlawful. With the combination of knowledge possessed by the MUI institution, food or drinks consumed by the public can be labeled halal, so that people do not hesitate to consume them.

There are quite a number of fatwa institutions in Indonesia, apart from the MUI institutions, also from religious institutions such as NU, Muhammadiyah and so on. All of them have an influence on the Muslim community in Indonesia, so that sometimes they have different opinions in deciding and establishing their fatwa, for example in determining the day of Eid and issues of contemporary Islamic law. Contemporary legal issues in question are events that arise in society that never happened during the time of the Prophet Muhammad such as test tube babies. Issues like this require ijtihad that cannot be guided by personal results alone, but wherever possible it is produced by a mutual agreement in the form of ijma'.

It has become a habit among the people since the revelation of the Koran, legal fatwafatwas were conveyed by the Prophet Muhammad to answer questions, after his death the task of issuing fatwafatwas (ifta) was carried out by Khulafaur Rasyidin (Abu Bakar Siddiq, Umar bin Khattab, Uthman bin Affan and Ali bin Abi Talib) which were then continued by the Fourth generation of Imams of the Madzhab (Hanafi, Malik, Syafi'i and Hambali) as well as leading scholars from the four schools of thought, until now the ifta task is still being carried on Individually, collectively by the Ulama, as well as institutional organizations by the Ministry of Religion, the Indonesian Ulema Council (MUI) and Islamic mass organizations such as Muhammadiyah and Nahdlatul Ulama (NU).

For the interests and legal needs of the Muslim community and society, the fatwa institution is turned on as a reference and a place to ask questions, to obtain answers, and explanations regarding the legal provisions of a new problem that occurs and develops in society, for example in Egypt a Fatwa Hall was established and Al Azhar University had a Fatwa section, television, as well as radio Cairo provides Fatwa Program facilities that are widely broadcast to the public.

Dr. Rifyal Ka’bah Ma in his book: Islamic Law in Indonesia notes that “Countries in the Middle East as well as in ASEAN, Malaysia, Brunei and Singapore open IFTA for fatwa giving lessons every working day”.

In Indonesia there has been a national level since July 26, 1975 the Indonesian Ulema Council was established which complemented its management with the Fatwa Commission which in the past 25 years has issued many important fatwafatwas, covering issues in various fields of religion, society, science/technology, medicine/health, social culture, education and others. At the same time, Islamic community organizations emerged such as Muhammadiyah with Lajnah Tarjih and Nahdlatul Ulama with Nahsul Masail; the two fatwa institutions were actively broadcasting their fatwafatwas to the community.

RESEARCH METHOD
The research method used is descriptive comparative which is a method that analyzes and solves problems that occur in the present based on the descriptions seen and heard from research results, either in the field or theory in the form of related data and books. With the discussion, then a comparison.

RESULTS AND DISCUSSION
The Meaning of Fatwa and Its Position in Islamic Law

Fatwa in the classic definition is optional or ikhtiyariyah, namely a choice that is not legally binding, although it is morally binding for mustard/ (the party requesting the fatwa), while for other than mustard/ nature Islamic which is more than just discourse. They are open to take the same fatwa or asking another multi/ expert for a fatwa. As for the Big Indonesian Dictionary, a fatwa is defined as an answer in the form of a decision or opinion given by a multi/expert on a matter; and (2) the advice of pious people; good lesson; and advice.
Fatwa is the official answer to questions and issues related to legal issues. Fatwa comes from the Arabic word al-ifta', al-fatwa which simply means giving a decision. Fatwa is not a legal decision that is made easily, or what is called making a law without basis.

According to Prof. Amir Syarifuddin, fatwa or ifta' comes from the word afta, which means giving an explanation. Definitively, a fatwa is an attempt to provide an explanation of syara' law by experts to people who do not know it. Fatwa is related to fiqh, both of which have a complementary relationship.

Fiqh contains a systematic description of the substance of Islamic law which is not entirely required by someone. Fiqh is seen as a book of law (rechtsboek), as a normative reference in carrying out daily actions. In the event that there are certain problems that require detailed explanations and descriptions, a person should consult the mufti to obtain advice or a solution to the problem at hand. It is clear that the function of the fatwa is to concretely apply the provisions of fiqh in certain matters.

Fiqh and fatwa, although very diverse and there may be contradictions with one another, are already part of the needs of society in the practice of implementing sharia. Compared to constitutional conventions which are written legal principles as referred to in the elucidation of the 1945 Constitution (before it was amended), which form the basis of constitutional life as long as these rules arise and are maintained in the practice of administering the state even though they are not written, it seems that fiqh and fatwa have in fact been occupy a similar position as convention in the practice of shari'ah.

The salaf (companions and tabi'in) do not like giving fatwa easily and if one of them has given a fatwa, it is considered sufficient. Fatwas also require adequate knowledge of what is intended to be fatwa. A fatwa issued by a mufti plays a role in transforming the general meaning of Islamic law into the specific cases at hand. In order to maintain the credibility of a fatwa which is morally binding for Muslims to obey, then not anyone can give a fatwa but it must meet certain qualifications like a mujtahid. Fatwa authority throughout the history of the journey of Islamic law has indeed been given to the scholars. There are fatwas issued individually and collectively in nature, which are the result of the consensus of the scholars.

In giving fatwa, not everyone can do it, a mufti must have several requirements that must be met such as mastering the opinions and principles in usul fiqh and fiqh, having the equipment to carry out ijtihad, knowing the knowledge needed to formulate a law, for example the science of Nahwu, linguistics, science of Mushthalalah al-Hadith, interpretation of verses and legal hadiths. Because the fatwa concerns religious matters, not just anyone can serve as mufti. The conditions that must be possessed by a mufti include:

1. The fatwa must be based on mu'tabar main books so that the fatwa given can be accepted by the recipient of the fatwa;
2. If he gives a fatwa based on the qouf of someone who is pious, then he can show the basis for taking his fatwa, thereby avoiding making mistakes and lying;
3. A mufti must understand or know the various opinions of the clergy so that there are no misunderstandings between him and the recipient of his fatwa;
4. A mufti must be a scholar who has honesty.

From the description above, it can be concluded that a fatwa is the result of a mufti's ijtihad in relation to a legal event submitted to him. So fatwas are more specific than fiqh or ijtihad in general. Because it is possible that a fatwa issued by a mufti has already been formulated in fiqh, but the fatwa requester has not yet understood it.

The word fatwa comes from Arabic which means opinion in the field of Legal Law (legal Opinion), while IFTA (Providing fatwa) is a synonym of Ijtihad, therefore ifta is more specific than ijtihad is istinbath (rechtsvinding) discovery of the formulation of legal provisions in general whether there are existing cases or not, while ifta concerns existing cases where the Multi formulates and determines the legal provisions. Professionally, ifta is an independent profession, but in many countries which are based on Islam or countries where the majority of the population consists of Muslims, the profession is closely related to state authority.

In the historical trajectory of the development of Islam from the first to the eighth century of the Hijri, it was the state that appointed multiis (scholars giving fatwas who were selected from qualified leading scholars). During the reign of the autonomous dynasty, the position of Mufti was concurrent with the position of Qadhi (Judge).

The absolute requirements for being appointed as a Multi are:

a. Islamic scholars/mujtahids
b. have insightful personal (fair) integrity
c. knowledgeable and has the ability to find and determine the law of a problem with personal reasoning

Since the beginning of the development of Islam, the legal need for *fatwas* has increasingly been felt, this is due to the increasing number of Muslim adherents, the expansion of the territory of Islamic rule, the emergence of new problems that do not yet have legal rules/provisions, the need for this law is increasingly urgent and is very much needed by Islamic scholars. Islamic law experts who are competent to provide *fatwas*. In Islamic literature, we recognize a collection of *fatwas* that have been recorded from the scholars of the four schools of thought. In Indonesia, the collection of *fatwas* is regulated by the Indonesian Ulama Council, Lajnah Tarjih Muhammadiyah and Nahsul Masail Nahdlatul Ulama.

In the era of the Prophet Muhammad's apostolate, what we know today with the duties and authorities in the legislative, executive and judicial fields were in one hand, namely the Prophet Muhammad himself as the messenger of God, at that time there was no separation between Religious Law and State Law.

The Prophet as the leader of the people/community, implements and regulates the running of government and determines the law. Deciding cases, one of the impacts of the political expansion of the territory and power and influence of Islam is that Islamic communities who are far from the center of government experience problems in consulting with the scholars who are in the center of government, so that Muslims in the regions submit their problems to the ulama/mujtahidin lokak settlement solutions according to Islamic law which of course are settlement solutions. According to Islamic law which are of course in accordance with the opinions and considerations of these scholars/mujtahidin in understanding Islamic law which began in a phase of the development of *Ijihad* law in the form of *fatwas*.

Even though the legal products of ulama's *fatwas* have no binding power and are only legal information, they are highly respected/cared for and obeyed as legal references in dealing with and determining the legal provisions of a problem. In Indonesia, the Indonesian Ulema Council, Muhammadiyah and NU have periodically collected/recorded *fatwas* that have been ordered and published, even among Muhammadiyah, the *fatwas* produced by Lajnah Tarjih are made into a kind of special *Fiqh* taught in schools up to university level, as well as being practiced among NU.

The dynamic nature of a *fatwa* means that a *fatwa* is not static, liable and not closed to the rule of change through a certain mechanism. Previous *fatwas* can be revised and annulled by later *fatwas*. In the literature, we know the *Ulama/Mujtahid Agung Imam Syafii* in the form of qaul qadim (old *fatwa*) and qaul jadid (new *fatwa*) regarding the same case according to developments in the dynamics of society, changes in the situation according to the development of the dynamics of society, changes in the situation and conditions after he moved from Baghdad (Iraq) to Cairo (Egypt).

From historical records, after state law was no longer fully based on Islamic legal rules, the position of Mufti (giving *fatwas*) has become an official position in several Islamic countries, such as the Mufti of Egypt, the *mufti* of Kuwait and other *muftis* (some of whom have visited Indonesia) With these developments the distribution of law to:

a. *Diyani*, matters of worship/religion, which are resolved through a *fatwa* institution;
b. *Qadhai*, juridical problems are getting clearer, the resolution is through the judiciary.

A *fatwa* is always associated with the legal category in *Ahkam Al Khamsah* in a matter or an action, namely Compulsory/sunnah/non-compulsory law, *Haram/halal* and *Makruh/mubah*

Today, the legal need for *fatwas* is increasing not only among the Islamic community but among the general public. In addition to religious issues, it also includes contemporary legal issues such as medicine/health, economics/finance/banking/insurance, science and technology, politics, socio-culture/education and various other topics, as well as several issues that have recently received the spotlight, for example: women as Heads of State/President, euthanasia, gene cloning in humans and the latest cases during the pandemic are use of the coronavirus vaccine.

**Role of the Indonesian Ulema Council (MUI)**

The Indonesian Ulema Council, abbreviated as MUI, is a non-governmental organization that accommodates Islamic scholars, *zu’ama* and scholars in Indonesia to guide, foster, and protect Muslims throughout Indonesia. The Indonesian Ulema Council was established on 7 *Rajab* 1395 Hijri, coinciding with July 26, 1975 in Jakarta, Indonesia. MUI is the government's partner in implementing development programs for the development of an Islamic life. The Indonesian Ulema Council as a forum for deliberation for Muslim scholars, *zu’ama* and intellectuals strives to:

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1. Dr. Rifyal Kabah, MA, dalam Hukum Islam di Indonesia, hal 214
Provide guidance to Indonesian Muslims in realizing religious and social life that is blessed by Allah Subhanahu wa Ta‘ala;

2) Providing advice and fatwās regarding religious and social issues to the Government and society, increasing activities for the realization of Islamic ukhuwah and inter-religious harmony in consolidating national unity and integrity;

3) Become a liaison between the ulama and umaro (government) and mutual translators between the people and the government in order to make national development successful;

4) Improving relations and cooperation between organizations, Islamic institutions and Muslim scholars in providing guidance to the community, especially Muslims by holding mutual consultation and information.

As a response to issues of Islamic law that are currently developing and actually emerging in society, the MUI has issued many fatwas. Recently, legal politics has been colored by discussions about the existence of the fatwa within the framework of the Unitary State of the Republic of Indonesia. Meanwhile, the MUI fatwa is a decision or opinion given by the MUI regarding a legal issue that arises in the life of Muslims. Even though MUI fatwas are not included in the category of positive law, and do not have coercive legal force, their enforcement may not use state apparatus such as police and prosecutorial institutions, and are not permitted in coercive ways, except if the MUI fatwa material has been adopted into the form of regulations in the form of laws and regional regulations. Basically, the contents and materials of the MUI fatwa are limited to or constitute mere opinions, which are not legally binding in nature and are not even binding on Muslims themselves, and cannot be enforced coercively, let alone being the sole basis for imposing sanctions in criminal acts.

In the constitutional legal system in Indonesia, the position of the MUI fatwa is only an aspirational law that has morally constructive power for communities that have aspirations to practice it, but the fatwa cannot be used as a coercive tool for other groups that have different opinions with the MUI fatwa, because it is not included in positive law. In other words, the position of the MUI fatwa can only be equated with the opinion of experts in law, language and religion. Because, to assess the material and content of the fatwa, Muslim scholars, zuama and intellectuals have more competence and knowledge to issue fatwas. So that the position of a fatwa in the life of Muslims is not legally binding, but only binding religiously. Thus, there is no opportunity for a Muslim to oppose it if the fatwa is based on valid propositions or texts. While positive law is the law that is currently in effect which includes generally accepted laws and regulations (regelings) or decisions that apply specifically (beschikking), the implementation of which is guarded by the state apparatus and the justice system.

The main task of the MUI, as set out in its basic guidelines, states that this assembly is expected to carry out its roles and duties in giving fatwas and advice, both to the government and to the public regarding religious issues in particular and related issues faced by the state in general. Muslims crave and expect a fatwa, because fatwas have the explanations about religious obligations (fara‘dih), limitations (hudud), and states about the prohibition or lawfulness of something.

The general basis for establishing a fatwa by the MUI is based on al-adillah al-ahkam and bringing benefit to the people. In addition, the basis for fatwas are the Koran, Hadith, ijmā‘, qiyyas and other legal arguments. While the fatwa determination procedure is carried out with predetermined stages and steps. In addition, the authority of the MUI is to issue fatwas on general religious issues that concern Indonesian Muslims nationally and on matters of Islam in regions that are suspected of spreading to other regions. There are at least three parts to the process in determining a fatwa, namely the legal basis for establishing a fatwa, fatwa procedures, techniques and organizational authority in issuing fatwas.

The position of the MUI fatwa

The MUI National Legal System, when viewed from the perspective of state institutions, is in the realm of the political infrastructure area, it is in the midst of society and the heartbeat of the socio-cultural life of society. Infrastructure is more in community empowerment spaces so that its role can only be seen by exploring the community. Because MUI is an organization of Muslim scholars who have the duty and function of empowering the community/Muslim community. MUI is an organization that exists in society and it is not a state-owned institution or represents the state. This also means that the MUI fatwa is not a state law that has sovereignty that can be imposed on all people. The MUI fatwa also does not have sanctions and does not have to be obeyed by all citizens. As a socio-political force that exists in the constitutional infrastructure, MUI fatwas are only binding and obeyed by the Muslim community who feel they have a bond with the MUI itself. This means that
actually the legality of the MUI fatwa cannot force all Muslims to obey it, moreover, to force all Indonesian citizens.

MUI fatwas have independent powers that drive government politics to formulate regulations that contain the substance of Islamic teachings. Such a fatwa has the power to control government politics. MUI's independent power influences the relationship between MUI fatwa and government politics in Indonesia to form a pattern of inter-independence based on civil society. There are several post-reformed of MUI fatwa patterns. First, fatwas that strengthen the resilience of the Unitary State of the Republic of Indonesia. Second, fatwas with the power of public reasoning, became the basis for drafting laws, such as the fatwa of banning Ahmadiyah, pornography, sharia regional regulations and sharia banking. Third, fatwas that have an impact on the formation of participatory public opinion in elections, such as the fatwa against abstaining from voting, non-Muslim legislative candidates and female presidents.

Fatwas in the Islamic legal system have a fairly dominant role in providing legal considerations among the people, even though they are considered not to have binding legal force (gbair mulzimah), unlike the case with court decisions that are ilzam (binding). In the Indonesian context, the MUI's fatwa status has a significant influence, it has become the foundation for the development of Islamic political ethics and Islamic law in Indonesia. The position of a fatwa in the context of sharia relations and state law can become a model for the design of Indonesia's national law.

In the context of legal provisions in Indonesia, a fatwa is not a rule that must be followed and enforced. Indonesia is a country that has a dual system in all fields including in the field of law. Continental European Law, Customary Law, and Islamic Law are the surviving laws in this country. Fatwa itself is included in Islamic law, and can be used as a consideration in legislation and judge's decisions in court.

If referring to the types and hierarchies as referred to in Law Number 12 of 2011, the position of the MUI fatwa is not a type of statutory regulation that has binding legal force. According to Najib, Lecturer at the Sharia Faculty of the Ibrahirmy Islamic Institute, MUI's position in Indonesian constitutionalism is actually in the elements of state administration infrastructure, because MUI is an organization of Alim Ulama Muslims who have duties and functions to empower society or Muslims, meaning that MUI is an existing organization. In society, is not a state-owned institution or represents the state.

If examined from a constitutional and legal point of view, MUI fatwas are basically non-binding and cannot be enforced by law enforcement, however, fatwa is only legal opinion which may or may not be followed. Likewise, if viewed from the point of view of abstract regulations, a fatwa can only be binding if a certain legal form has been taken by a competent institution, so that it becomes positive law. Carry out fatwas as a form of personal religious awareness, not as a legal obligation. This means that the MUI fatwa is not a state law that has sovereignty that can be imposed on all people. Basically, the legality of MUI fatwas cannot be forced to be obeyed by all Muslims.

Position of the DSN Fatwa in the Legal System in Indonesia

The fatwas issued by the DSN-MUI are not positive law, just like the fatwas issued by the MUI in other fields. In order for the fatwas issued by the DSN-MUI to be valid and binding as positive law applies in Indonesia, Law Number 21 of 2008 concerning Islamic Banking states that the fatwas issued by the DSN-MUI can be followed up as regulations of Indonesian Bank.

The provisions regarding the DSN-MUI fatwa that can be valid and binding is understood from article 26 of Law Number 21 of 2008:
1) Business activities as referred to in Article 19, Article 20, and Article 21 and/or sharia products and services, must comply with Sharia Principles.
2) The Sharia principles referred to in paragraph (1) are issued by the Indonesian Ulema Council.
3) The fatwa as referred to in paragraph (2) is set forth in a Bank Indonesia Regulation.
4) In the framework of drafting Bank Indonesia Regulations as referred to in paragraph (3), Bank Indonesia forms a sharia banking committee.
5) Further provisions regarding the procedures for establishing, membership and duties of the sharia banking committee as referred to in paragraph (4) are regulated in a Bank Indonesia Regulation.

From article 26 of Law Number 21 of 2008, it can be concluded that there is binding legal force between the fatwa issued by the DSN-MUI and positive law in the form of PBI issued by Bank Indonesia. This relationship shows how the role of fatwa institutions in Indonesia is very significant and strategic in building and advancing Islamic Financial Institutions while still paying attention to sharia laws that must be obeyed by LKS.
DSN-MUI has an important role in maintaining LKS compliance with Sharia principles. Law Number 21 of 2008 confirms that every business activity must not conflict with sharia, which is referred to in the fatwa that has been issued by the DSN-MUI and has been converted into the PBI. Thus a fatwa that has been referred to and made into a Bank Indonesia Regulation (PBI) which is binding on every LKS or binding on the public, while a fatwa that has not been contained in a PBI cannot be said to be binding. However, when referring to Bank Indonesia Regulation No.11/15/PBI/2009 which has provided an understanding that sharia principles are Islamic legal principles in banking activities based on fatwas issued by the National Sharia Council-Indonesian Ulama Council, then sharia principles by law have been in force. As positive law even though it has not been stated in a Bank Indonesia Regulation.

CONCLUSION
Legislative rules of Islamic law since the beginning of the growth and development process, after going through various stages and entering the stages of compiling and codifying them are part of positive law in Indonesia in the form of statutory products as well as legal thoughts by fatwa institutions. Along with Indonesia in general, the activities of legal discussion forums and Islamic mass organizations, products from fatwa institutions should be further improved, compiled/booked and published to the public as guidelines and reference material in anticipating problems in today’s society and an increasingly complex future.

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