

CHARACTERISTICS AND ESSENCE OF FATWAS ON ISLAMIC ECONOMIC LAW IN INDONESIA

Doli Witro, Atang Abdul Hakim, Koko Komaruddin

UIN Sunan Gunung Djati Bandung

doliwitro01@gmail.com, atangabdulhakim11@gmail.com,

koko.komaruddin@uinsgd.ac.id

ABSTRACT

In Indonesia, one of the institutions authorized to issue fatwas is the Indonesian Ulama Council (MUI). MUI is an institution with the role and authority to issue fatwas for Indonesian citizens who are diverse in Islam which are not mentioned in the Al-Quran and Hadith. Although not all groups can accept the fatwa issued by the MUI or there are reaping criticism and controversy by some circles, the influence and role of the MUI fatwa are considerable in maintaining the peace of the Indonesian people. Departing from this, it is essential to see fatwas based on the characteristics and essence of fatwas on Islamic economic law. This paper is conducted in qualitative research. There are several approaches used in this paper, namely, the normative approach, the historical approach, and the political approach. This paper aims to reveal the characteristics and essence of fatwas on sharia economic law in Indonesia. The analysis results show that fatwas as a product of Islamic law are identical to fiqh and have inherent specific characteristization. In

essence, a fatwa can become state law if there is recognition through competent state institutions.

Keywords: *Characteristics of Fatwa, Essence of Fatwa, Fatwa of Islamic Economic Law*

Introduction

Differences in number of the people in an area, also social dynamics that occurs, and communication amongs community members will leads to the development of social life in a society. Along with this, technological advantage also taking parts in this development, resulted into new habits, lifestyles, attitudes, and behaviors. Departing from these situation or reality, people accepts all of that and manifested it into a culture in society, including in economic terms. Even though there are differences in culture, lifestyle, attitudes, and behavior, it is also what Allah sees, the best humans are the most devout of Him as contained in Q.S. 49: 13 and Q. S. 67: 1.¹

Indonesia is a country with the most significant Muslim majority globally,² and can be an example for other countries in implementation of Islamic Sharia.³ With the presence of the Islamic economic system in Indonesia in the last few years,

¹Muhammad Maulana Hamzah, "Peran Dan Pengaruh Fatwa Mui Dalam Arus Transformasi Sosial Budaya Di Indonesia", *Millah: Jurnal Studi Agama*, Vol. 1, No. 1, 2017, h. 128.

²Doli Witro, "Ulama and Umara In Government Of Indonesia: A Review Of Religion and State", *Madania*, Vol. 24, No. 2, 2020, h. 135.

³Hasan Sultoni, "Peran Dewan Pengawas Syariah Pada Lembaga Keuangan Syariah Di Indonesia", *Jurnal Eksyar (Jurnal Ekonomi Syariah)*, Vol. 6, No. 2, 2019, h. 107.

there has been rapid development.⁴ In general, the goal of Islamic economics is to maximize long-term human welfare.⁵

The answers for these situation certainly comes from the moslem scholars, as a fatwa. The fatwas of the moslem scholars formed from various books of *fiqh*. In addition, fatwas are also commonly stated in institutional decisions. Fatwas mostly comes from *ijtihad* ulama, which are casuistic, in responses to question asked by the person requesting an answer conducted in the form of fatwa.

In Indonesia, one of the institutions authorized to issue fatwas is the Indonesian Ulama Council (MUI).⁶ MUI is an institution with the role and authority to issue fatwas for Indonesian citizens who are diverse in Islam which are not mentioned in the Al-Quran and Hadith.⁷ MUI is also the most competent institution to solve problems and answer from any religious problem experienced by the moslem community, including issues of sharia economic law. MUI has also won the

⁴Abdul Haris Simal, "Relevansi Fatwa Dalam Regulasi Perbankan Syariah Sebagai Landasan Operasional Perbankan Syariah", *Jurnal Hukum Ekonomi Syariah*, Vol. 3, No. 2, 2019, h. 158.

⁵Rd Nurhayati, "Penerapan Fatwa Dewan Syariah Nasional Tentang Hukum Jaminan Dalam Akad Pembiayaan Mudharabah", *Mutawasith: Jurnal Hukum Islam*, Vol. 1, No. 1, June 26, 2018, h. 94.

⁶MUI was formed on 26 July 1975 AD which coincided on 17 Rajab 1395 H in Jakarta in a meeting of ulama which was attended by a council of ulama, representatives from Islamic organizations, spiritual builders from four government forces / officers (Navy, Air Force, Army, and the Indonesian Police), as well as various scholars from various regions on behalf of themselves. See, Wildan Imaduddin Muhammad, "KEBERANJAKAN FATWA DARI LEGAL OPINION MENJADI LEGAL BINDING: (Studi Kasus Fatwa DSN MUI Tentang Perbankan Syariah)", *Jurisprudensi: Jurnal Ilmu Syariah, Perundang-Undangan, Ekonomi Islam*, Vol. 11, No. 2, 2019, h. 150.

⁷Mumung Mulyati, "Kontribusi MUI Dalam Pengembangan Dan Penerapan Hukum Islam Di Indonesia", *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial*, Vol. 7, No. 1, September, 2019, h. 85.

trust of the government and society.⁸ Although not all groups nor circles accepts the fatwa issued by MUI, or it is still reaping criticism and controversy by some groups/circles, the influence and role of the MUI's fatwa are huge in maintaining peace of the Indonesian people.⁹

Departing from the description above, it is essential to see fatwas based on their characterization and nature of Islamic economic law fatwas. This paper conducted in qualitative research. Problem identification in this paper related to the characteristics and nature of Islamic economic law fatwas in Indonesia. There are several approaches used in this paper, namely, a normative approach, a historical approach, and a political approach.¹⁰ This paper aims to provide and reveal the characteristics and nature of Islamic economic law fatwas in Indonesia.

Definition of fatwa

Etymologically, fatwa means advice and answers to questions related to law.¹¹ In a matter of ter or language, fatwa

⁸Muhamad 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*, Vol. 6, No. 1, 2019, h. 2.

⁹Maulana Hamzah, "Peran Dan Pengaruh Fatwa Mui Dalam Arus Transformasi Sosial Budaya Di Indonesia"..., h. 128; Agus Waluyo, "Kepatuhan Bank Syariah Terhadap Fatwa Dewan Syariah Nasional Pasca Transformasi Ke Dalam Hukum Positif", *Inferensi*, Vol. 10, No. 2, 2016, h. 519; Abdullah Zaitun and Endra Wijaya, "Dinamika Penerapan Ijtihad Bidang Hukum Ekonomi Syariah Di Indonesia", *Jurnal Hukum & Pembangunan*, Vol. 49, No. 2, 2019, h. 304.

¹⁰Andi Fariana, "Urgensi Fatwa MUI Dalam Pembangunan Sistem Hukum Ekonomi Islam Di Indonesia", *Jurnal Al-Ihkam*, Vol. 12, No. 1, 2017, h. 90.

¹¹Sofyan A. P. Kau, "Posisi Fatwa Dalam Diskursus Pemikiran Hukum Islam", *Al Ulum*, Vol. 10, No. 1, 2010, h. 178-79.

means an answer to an event or a condition (giving a firm answer to all events that occur in society). According to Zamakhyari in his book *al-Kasyaf*, a fatwa is a straight path.¹² According to Yusuf Qaradawi, fatwa means an answer to an incident. In M. Quraish Shihab's view, the fatwa had to pay an attention to sociological condition of that time so that it won't cause any further diversity of the people or the destruction of a nation.¹³

According to Ma'ruf Amin, who quoted the opinion of classical scholars that fatwa in language, the word fatwa comes from the Arabic *al-fatwa*. According to Ibn Manzhur, the word "fatwa" is a form of *mashdar* from the word *fata*, namely fatwa, which means young, new, explanation, enlightenment. This opinion is almost the same as the opinion of al-Fayumi, which states that *al-fatwa* comes from the word *al-fata*, which means robust youth. Meanwhile, according to Al-Jurjani, a fatwa comes from *al-fatwa* or *al-futya*, which means an answer to a problem (*musykil*) in the field of law. So that fatwa in this terms is also interpreted as explaining.¹⁴ This definitive meaning shows that first, a fatwa is a legal opinion issued by a *mufti*. The process of forming a legal opinion uses a particular *ijtihad* method. Second,

¹²Soleh Hasan Wahid, "Pola Transformasi Fatwa Ekonomi Syariah Dsn-Mui Dalam Peraturan Perundang-Undangan Di Indonesia", *Ahkam: Jurnal Hukum Islam*, Vol. 4, No. 2, 2016, h. 174.

¹³M Ridhwan Ar Rasyid and Efri Syamsul Bahri, "Pertimbangan Dewan Syariah Nasional Dalam Menetapkan Fatwa Akad Transaksi Syariah Di Indonesia (National Sharia Council Considerations in Establishing Fatwa Sharia Transaction Agreements in Indonesia)", *Perisai: Islamic Banking and Finance Journal*, Vol. 3, No. 2, 2019, h. 94.

¹⁴Atmo Prawiro, "Kelemahan Fatwa Dan Kompilasi Hukum Ekonomi Syariah Dalam Kebijakan Legislasi Ekonomi Di Indonesia", *Jurnal Al-Ashriyyah*, Vol. 2, No. 1, 2016, h. 159.

fatwas are dynamic. Fatwa was born to respond to legal issues.¹⁵

According to Muhammad Sa'id Muhammad al-Barawi, there are four pillars of the fatwa. First, *al-sa'il*, referred to as *mustafti*, is a person who asks for a fatwa or one who asks questions related to issues in religion. Second, *al-mas'ul*, referred to as mufti, is the person who gives fatwas or the person who answers all these problems. Third, *al-'amaliyyah*, are fatwas issued by the mufti. Fourth, *al-Madhmun*, is the guaranteed truth of a fatwa.¹⁶

Judging from the legal product, there is a difference between *mujtahid* and *mufti*, the *mujtahid* concludes the law from the Al-Quran and Sunnah in various cases, whether requested by other parties or not. The *mufti* does not issue a fatwa, except when asked, and the issues raised to him are issues that can be answered according to his knowledge. Therefore, in dealing with a legal issue, the *mufti* must know the case in question, consider the benefit of the fatwa requestor, the environment surrounding him, and the objectives to be achieved from the fatwa.¹⁷

As a result of human thought, fatwas In judicial practice in Indonesia, fatwas can be included as an opinion of a legal expert. Fatwa is a legal opinion regarding Islamic law on an

¹⁵Zulkarnain Suleman, "Dinamika Pemikiran Hukum Islam: Corak Dan Karakteristik", *Al-Mizan*, Vol. 12, No. 1, 2016, h. 102.

¹⁶Ar Rasyid and Bahri, "Pertimbangan Dewan Syariah Nasional Dalam Menetapkan Fatwa Akad Transaksi Syariah Di Indonesia (National Sharia Council Considerations in Establishing Fatwa Sharia Transaction Agreements in Indonesia)" ..., h. 94.

¹⁷Anita Marwing, "Fatwa Ekonomi Syariah Di Indonesia", *Al-Amwal : Journal of Islamic Economic Law*, Vol. 2, No. 2, 2017, h. 215.

issue that can be used as a source of law as a legal consideration for judges to make decisions.¹⁸

Seeing this, the fatwas issued by the Indonesian Ulama Council (MUI) related to various problems faced by Muslims are included in the fatwa criteria by certain institutions outside the government. This is since MUI is a non-governmental institution. The historical background shows that MUI is not an institution established by the government, nor is it a government institution. Therefore, the fatwa issued also does not have the effect of legality as the government ruling. The only difference is if a community organization such as Nahdhatul Ulama or Muhammadiyah, or others, is directed at Muslims within the organization, while MUI is aimed at all Muslims in Indonesia.¹⁹

The Characteristics of Islamic Economic Law Fatwa

Differences in laws and regulations in Islamic countries shows that the characteristic of Islamic legal thinking is plurality. The plurality of legal opinions is richer, shown by the books of *fiqh* and the fatwas of the ulama. This plurality of legal opinions illustrates that Islamic legal thinking is not single but diverse and different.²⁰ In terms of Islamic law, the meaning of fatwa is an explanation of sharia law in answering problems or cases submitted by person who asks whether the explanation is mind-clearing or doubtful, and the explanation leads to personal interests or the interests of the public at large scale. In theory,

¹⁸Ibnu Elmi A.S. Pelu, "Kedudukan Fatwa Dalam Konstruksi Hukum Islam", *El-Mashlahah Journal*, Vol. 9, No. 2, 2019, h. 170–71.

¹⁹Agus Triyanta, "Fatwa Dalam Keuangan Syariah: Kekuatan Mengikat Dan Kemungkinannya Untuk Digugat Melalui Judicial Review", *Jurnal Hukum Ius Quia Iustum*, Vol. 21, No. 1, 2014, h. 8.

²⁰Suleman, "Dinamika Pemikiran Hukum Islam: Corak Dan Karakteristik" ..., h. 105.

fatwas as a product of Islamic law are identical to *fiqh*, but have inherent specific characterization. Fatwa is the result of *ijtihad* by a mufti, a person or an institution from questions asked to him regarding a legal event. These legal events may have been discussed in *fiqh*, but not specifically for whom in needs. The nature of the fatwa is casuistic/case based and has with no binding power.²¹

DSN-MUI fatwa is also a form/type of fatwa issued by the MUI to be referred as MUI's fatwa. However, this mention can lead to misunderstanding by other forms/types of MUI's fatwas issued by the MUI Fatwa Commission. As a fatwa institution formed by MUI and by membership, also involves MUI administrators, DSN-MUI is different section from the Fatwa Commission. If the existence of the Fatwa Commission coincides with the existence of the MUI itself and its fatwa fields, cover all social fields, namely *aqidah* and religion, worship, social and cultural traditions, food, medicine, and science, and technology, DSN was only formed in 1999²², and its fatwa's area are limited to sharia economics. Therefore, for technical reasons, the use of the term DSN-MUI fatwa is standardized or semi-standardized.

DSN-MUI fatwa is an unwritten law. The written form in a unique format does not mean a written law. As an unwritten law, the implementation of the DSN-MUI fatwa becomes

²¹Danu Aris Setiyanto, "Fatwa Sebagai Media Social Engineering (Analisis Fatwa MUI Di Bidang Hukum Keluarga Pasca Reformasi)", *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum*, Vol. 3, No. 1, 2018, h. 90.

²²N Hidayah, "Fatwa-Fatwa Dewan Syariah Nasional Atas Aspek Hukum Islam Perbankan Syariah Di Indonesia", *Al-Adalah*, Vol. 10, No. 1, 2011, h. 15; Irwan Misbach, "Kedudukan Dan Fungsi Dewan Pengawas Syariah Dalam Mengawasi Transaksi Lembaga Keuangan Syariah Di Indonesia", *Jurnal MINDS (Manajemen Ide Dan Inspirasi)*, Vol. 2, No. 1, 2015, h. 81; Aidil Novia, "Kontribusi Fiqh Legal Maxim Dalam Fatwa-Fatwa Ekonomi Syariah Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI)", *Tsaqafah*, Vol. 12, No. 1, 2016, h. 88.

internal/exclusive. This means that peoples which obedience to DSN-MUI's fatwa only based on his religious beliefs because the DSN-MUI fatwa is part of Islamic law.

DSN-MUI fatwa can be turned into a written law, and peoples obedience to it also becomes external/inclusive or wide-spread when the material is outlined in statutory regulations, which according to Pasal 7 Ayat 1 UU No 12 tahun 2011 about Peraturan Pembentukan Perundang-undangan, Hierarchy of Indonesian laws and regulations consisting of: a) the 1945 Constitution of the Republic of Indonesia; b) Decree of the People's Consultative Assembly; c) Laws/Government Regulations; d) Government Regulations; e) Presidential Regulation; f) Provincial Regulations; and g) District/City Regional Regulations.

When the material for the DSN-MUI fatwa has been stated in the statutory regulations, its effect is not due to its substance originating from the DSN-MUI fatwa but its standard format that time as part of statutory regulations. However, to legalize DSN-MUI fatwa into statutory regulations takes a distinctive form, unlikely in legalizing any other Islamic legal materials. This is because the DSN-MUI fatwas have formed a building for an Islamic economic system. To legalize these fatwas into statutory regulations will result in incomplete building of the transformed Islamic economic system if it is not carried out thoroughly. Therefore, legalizing DSN-MUI fatwas into statutory regulations is not sufficient to transform the content and idioms, definitions, and supporting conditions, in addition to the mention of the nomenclature in the material of the relevant laws and regulations.²³

²³Ja'far Baehaqi, "Paradoks Fatwa Dewan Syariah Majelis Ulama Indonesia Dalam Regulasi Hukum Perbankan Syariah", *Al-Ahkam*, Vol. 27, No. 1, 2017, h. 6-11; Dudang Gojali, "Implementasi Hukum Ekonomi Syariah

In the history of the Religious Courts in Indonesia, the Religious Courts can examine, handle, and decide civil cases (family matters, inheritance, divorce, and so on), the Religious Courts use fatwas as a legal basis, namely fatwas approved by the Supreme Court and the Religious Courts. . Then as an example that judges had also used fatwas as a consideration in deciding civil cases, namely in Law Number 3 of 2006 concerning Religious Courts it is stated that the Religious Courts have the authority to resolve sharia economic disputes, therefore the MUI fatwa product is used as a basis for deciding before there was a law on sharia economics, for example, the MUI fatwa Number 21 of 2001 concerning the General Guidelines for Sharia Insurance, the MUI fatwa Number 3 of 2003 concerning Income Zakat, and other fatwas concerning sharia-based economics.²⁴

The excellent relationship between Bank Indonesia and the National Sharia Council-Indonesian Ulema Council (DSN-MUI) has resulted in many Bank Indonesia Regulations (PBI) that adapt and harmonize DSN-MUI fatwas. So it can be said that the absorption of fatwas into official state regulations has been going well in the banking sector. The same is true in other sectors; such as the insurance, financing, and capital market sectors.²⁵

In its history, the National Sharia Council (DSN-MUI), as part of the MUI, has been a pioneer of legal basis policies with a fatwa issued to develop LKS (Islamic Financial Institutions),

Pada Lembaga Keuangan Syariah", *Jurnal Ilmu Akuntansi Dan Bisnis Syariah*, Vol. 1, No. 2, 2019, h. 132.

²⁴Pelu, "Kedudukan Fatwa Dalam Konstruksi Hukum Islam"..., h. 171-72.

²⁵Rahman Helmi, "Manhaj Penetapan Fatwa Hukum Ekonomi Syariah Di Indonesia", *Syariah Jurnal Hukum Dan Pemikiran*, Vol. 18, No. 2, 2018, h. 304.

which were proposed to the Government as an alternative to the country's economic system facing a crisis. DSN is an institution formed by the MUI, which has the function of carrying out MUI tasks in dealing with issues related to the activities of Islamic financial institutions. One of the main tasks of the DSN is to study, explore and formulate the values and principles of Islamic law (sharia) in the form of fatwas to be used as guidelines in transaction activities in the LKS. This institution also consists of experts in Islamic law (*fuqaha*) and experts and practitioners of the economy, especially the financial sector, banks, and non-banks, which function to carry out the duties of the MUI in encouraging and advancing the economy of the people. Through the Sharia Supervisory Board (DPS), DSN has the duty and function of supervising the implementation of sharia principles in the system and management of Sharia Financial Institutions (LKS) to conform with sharia lines. Since its establishment in 1999 and starting to issue fatwas from 2000 to December 2014, the DSN-MUI has issued 95 fatwas on sharia economics. Details of the fatwa (DSN-MUI) are as shown in table 1.²⁶

Table 1.
List of DSN Fatwas Category

No.	Category of Fatwa	Amount
1.	Relating to Islamic Banking	61
2.	Relating to Sharia Insurance	6
3.	Relating to the Sharia Capital Market	10
4.	Relating to Sharia Pawnshops	3
5.	Relating to Sharia State Securities	5

²⁶Prawiro, "Kelemahan Fatwa Dan Kompilasi Hukum Ekonomi Syariah Dalam Kebijakan Legislasi Ekonomi Di Indonesia" ..., h. 154–55.

6.	Relating to Sharia Accounting	1
7.	Relating to Sharia Financing	3
8.	Relating to <i>Qardul Hasan</i>	1
9.	Relating to Umrah Services	1
10.	Relating to BMT (<i>at-Tamwil</i>)	2
11.	Relating to the Sharia Pension Fund	1
12.	Relating to the Property Business	1
	Amount	95

In 2019, the fatwas issued by the DSN-MUI increased to 109 Islamic economic fatwas, which can be grouped into five main areas, namely fatwas on sharia banking, fatwas on sharia insurance, fatwas on the sharia capital market, fatwas on sharia financing, and fatwas on implementation sharia business. Of the five fields, fatwas on Islamic banking are still the dominant one.²⁷

The Essence of Islamic Economic Law Fatwa

Fatwas are type of product of Islamic legal thought.²⁸ Muslims generally use fatwas as a reference in attitude and behavior. Because fatwa among public is like an argument among *mujtahids* (*al-fatwa fi haqqil 'ami kal adillah fi haqqil mujtahid*), it means that the position of a fatwa for most is like the argument for *mujtahids*.²⁹ It can be understood that fatwas are essentially providing legal answers to problems that are not

²⁷Baehaqi, "Paradoks Fatwa Dewan Syariah Majelis Ulama Indonesia Dalam Regulasi Hukum Perbankan Syariah" ..., h. 7.

²⁸Nova Effenty Muhammad, "Fatwa Dalam Pemikiran Hukum Islam", *Al-Mizan*, Vol. 12, No. 1, 2016, h. 15.

²⁹Wahid, "Pola Transformasi Fatwa" ..., h. 180.

found in the Al-Quran or Hadith or reaffirming the position of a problem in the perspective of Islamic teachings.³⁰

Fatwas have a vital position in Islam. Fatwas are seen as an alternative that can break the ice in the development of Islamic law. In its stipulation, Islamic law cannot be separated from religious arguments (*al-nushush al-syari'iyah*), faces serious problems when dealing with growing problems that are not covered in religious texts. Religious texts have stopped in quantity, but diametrically the problems and cases are proliferating along with the times. In these conditions, the fatwa becomes an alternative way of solving problems and events that arise. Functionally, the fatwa has the function of *tabyin* and *tawjih*. *Tabyin* means explaining the law which is a practical regulation for the community, especially those who expect its existence. *Tawjih*, which provides guidance and enlightenment to the broader community regarding contemporary religious issues.³¹

The functions of *tabyin* and *tawjih* fatwa are tied to the function of ulama so that sharia fatwas have been issued since the generation of sahabat, *tabi'in*, *tabit tabi'in*, and the generation after that until the generation of scholars today. The characteristics of classical fatwas are more individual and independent than in the era of the school of fatwas that were made within the scope of certain *fiqh* schools. Meanwhile, contemporary fatwas are often cross-sectional or combination (*taufiq*) between the schools.³²

³⁰Diana Mutia Habibaty, "Peranan Fatwa Dewan Syariah Nasional-Majelis Ulama Indonesia Terhadap Hukum Positif Indonesia", *Jurnal Legislasi Indonesia*, Vol. 14, No. 4, 2017, h. 449.

³¹Wahid, "Pola Transformasi Fatwa...", h. 180-81.

³²M. Erfan Riadi, "Kedudukan Fatwa Ditinjau Dari Hukum Islam Dan Hukum Positif", *Ulumuddin*, Vol. 6, No. 4, 2010, h. 471-72.

Fatwas, as a result of ulama's *ijtihad* is an attempt by the *mujtahid* to use human reason to find legal conclusions from authoritative revelation. The resulting *Ijtihad* is expected to provide solutions to legal problems faced by the community.³³ The nature of the fatwa, which is the implementation of social consultation, has no binding force. However, a fatwa can then become advice or be recommended to the state, which can then be recognized as a legal consideration. More than that, fatwas, in essence, could become state law if there was recognition through competent state institutions.³⁴

Fatwas are often used as a discourse for *ushul fiqh* scholars in monumental works. In the perspective of the *ushul fiqh* scholars, fatwa is interpreted as an opinion put forward by the *mujtahid* as an answer to a question asked by *Mustafti* in a non-binding case. *Mustafti* can be an individual, an institution, or a community group. Fatwa products do not have to be followed by *mustafti*, therefore fatwas do not have binding power.

Fatwas occupy an essential position in Islamic law because fatwas are an opinion put forward by Islamic jurists (*fuqaha*) regarding the legal position of a new problem in the community. When a new problem arises for no explicit (firm) legal provision, either in the Al-Quran, Sunnah, and *ijma'* or previous *fuqaha* opinions, then the fatwa is one of the normative institutions that is competent to answer or determine the legal position of the problem. Because of their position, which is considered to determine the law of a

³³Imaro Sidqi and Doli Witro, "Kedudukan Fatwa Majelis Ulama Indonesia (MUI) Dalam Perspektif Hukum Islam Dan Nasional: Studi Implikasi Fatwa Terhadap Masyarakat", *Nizham: Jurnal Studi Keislaman*, Vol. 8, No. 1, 2020, h. 21.

³⁴Setiyanto, "Fatwa Sebagai Media...", h. 92.

particular case or problem, Western scholars of Islamic jurisprudence categorize fatwas as Islamic jurisprudence.

In connection with the above, fatwas can be interpreted as an explanation of sharia law on specific issues so that the method of taking fatwas is no different from the principle of exploring sharia laws from sharia arguments (*ijtihad*). The reason is, the only way to know sharia law from sharia arguments is by employing *ijtihad*, and there is no other way. Therefore, a *mufti* (fatwa giver) is no different from a *mujtahid* who devotes all his ability to find law from the source of Islamic law, namely the Al-Quran and Hadith. In the end, MUI fatwas cannot be treated without legislation from the state (enforced by the state) as state law. So, its enforceability only depends on the individual's awareness as adherents of Islam, in particular.³⁵

Conclusion

Fatwas as a product of Islamic law are identical to *fiqh* and have inherent specific characteristics. Fatwa is the result of the *ijtihad* of a *mufti* (person) or an authorized institution on questions raised to him in connection with a legal event. These legal incidents may have been discussed in *fiqh*, but those who ask for a fatwa cannot necessarily be understood. Then the nature of the fatwa also has a casuistic nature and has no binding power.

In essence, a fatwa is to provide legal answers to problems that are not found in the Al-Quran or Hadith or to reaffirm the position of a problem in the perspective of Islamic teachings. More than that, fatwas, in essence, could become state law if there was recognition through competent state institutions. In the end, MUI fatwas cannot be treated without

³⁵*Ibid.*, h. 102.

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