



The Absorptive Capacity of Fatwa Institutions in Indonesia on Contemporary Issues

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ABSTRACT

The existence of fatwa institutions is very important because it can provide a roadmap for resolving contemporary legal problems. This research aims to examine the nature and importance of fatwas, the existence of fatwa institutions in Indonesia and their mandate and the absorption capacity of fatwa institutions in Indonesia in responding to current problems. Research was carried out in the literature using a normative-historical approach in analyzing the absorption capacity of fatwa institutions in responding to contemporary issues. The fatwa institutions in question are centered on the Majelis Tarjih Muhammadiyah, Bahtsul Masa'il Nahdlatul Ulama (NU) and by fatwa institutions such as the Indonesian Ulema Council (MUI). The results show that a fatwa is a form of answer from a mufti to a question asked by a mustafti which is based on a compelling case. Remembering that the mufti is the person chosen to be the caliph and successor of the Prophet, as stated by Imam Syatibi. Therefore, fatwas have a strategic and important position in social life to answer contemporary problems. Fatwa plays an important role in answering contemporary problems, especially problems in the era of modernization. One reason is because the majority of Muslims need legal answers that can solve problems. Based on the number of fatwas that have been issued, it shows that fatwa institutions in Indonesia have responded to contemporary legal issues.

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1. Introduction

Fatwa is a product of Islamic law which is considered capable of responding to challenges and changes.¹ Every era definitely has its own problems in life. The response from the ulama is very important and has a very high position in resolving problems that might arise if things are left alone.² The existence of the Qur'an as the first source of Islamic law is very limited. Likewise, hadith, which is legally the second source of Islamic law after the Qur'an, also has a limited quantity, in contrast to the problems faced by the people are not limited. Therefore, in overcoming the infinite problems of the people, Islam provides legality. to the ulama to carry out *ijtihad*. As a form of Islamic law in the context of Indonesian society, fatwa is a form of *ijtihad*. Therefore, religious fatwas are really needed to answer various life problems. Ulama are required to immediately provide answers through their fatwas and try to get the people out of confusion in order to obtain clarity on Islamic teachings regarding the problems being faced. The implementation of legal products in life, especially those related to contemporary issues, requires *ijtihad* institutions that meet these specific needs.

So far, research related to the absorptive capacity of fatwa institutions in responding to contemporary issues has been carried out. For example, research conducted by Dahlan et al analyzed al-Buti's thoughts regarding *masalah* and its implementation by leading fatwa institutions in the world. The fatwa discussed is specifically the fatwa regarding online marriage contracts.³ Zamzuri et al focused their attention on fatwa coordination in Malaysia in influencing investor behavior.⁴ Furthermore, there is a study related to MUI fatwa Number 24 of 2017 concerning *mu'amalah* guidelines and interacting via digital platforms carried out by Suhufi et al.⁵ Meanwhile, Ibrahim and Salam focused their study on the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) regarding the implementation of *murabahah* contracts in sharia banking in Aceh.⁶ Meanwhile, research regarding the absorption capacity of fatwas in responding to contemporary issues is generally still rarely carried out, so the authority of fatwas is not yet clear if it has not been analyzed widely. Likewise, comparative analysis regarding the *manhaj* of fatwa institutions has not been carried out in depth. This research is present to

¹ Ahmad Rafiq, *Hukum Islam di Indonesia*, (Jakarta: Raja Grafindo Persada, 2000), 9.

² M. Erfan Riadi, "Kedudukan Fatwa Ditinjau Dari Hukum Islam Dan Hukum Positif (Analisis Yuridis Normatif)", *Ulumuddin: Journal of Islamic Legal Studies* 6, no. 4 (2010): 468–477.

³ Abdurrahman Dahlan, et al. "Al-Buti's Thoughts on Maslāhah and Its Application in the Fatwa of World Fatwa Institutions." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 2 (2023): 1148-1170. <http://dx.doi.org/10.22373/sjhk.v7i2.17552>

⁴ Zamzuri Zamzuri, Salmy Edawati Yaacob, and Nurulashiqin Mahmud Zuhudi. "The Relationship between Investor Behaviours with Fatwa Coordination of Amanah Saham Nasional (ASN) and Amanah Saham Bumiputera (ASB)." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 7, no. 1 (2023): 499-521. <http://dx.doi.org/10.22373/sjhk.v7i1.16015>

⁵ Muhammad Shuhufi, et al. "Islamic Law and Social Media: Analyzing the Fatwa of Indonesian Ulama Council Regarding Interaction on Digital Platforms." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 6, no. 2 (2022): 823-843. <http://dx.doi.org/10.22373/sjhk.v6i2.15011>

⁶ Azharsyah Ibrahim, and Abdul Jalil Salam. "A comparative analysis of DSN-MUI fatwas regarding *murabahah* contract and the real context application (A study at Islamic Banking in Aceh)." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 5, no. 1 (2021): 372-401. <http://dx.doi.org/10.22373/sjhk.v5i1.8845>

fill this void and contribute to the existence of fatwa institutions in responding to contemporary issues.

In Indonesia, *ijtihad* organizations have the authority to issue fatwas regarding legal issues. Support from fatwa institutions is very important in efforts to resolve current legal problems because it will provide a guide for doing so. This absorptive capacity is part of the results of fatwas that are developing in Indonesia, both by fatwa institutions such as the Indonesian Ulema Council (MUI), and by religious institutions such as *Majlis Tarjih Muhammadiyah*, *Bahtsul Masa'il Nahdlatul Ulama (NU)*.⁷ Fatwa as a product of Islamic law is certainly an effort to respond to contemporary issues that are synonymous with digitalization.⁸ Very diverse contemporary issues will raise questions regarding the law in Islam.⁹ For this reason, this research formulates several central questions regarding the nature and importance of fatwa, then the existence of fatwa institutions in Indonesia and their *manhaj* and the absorptive capacity of fatwa institutions in Indonesia in responding to current problems.

In accordance with the focus of the research above, the aim of this research is to clarify the absorptive capacity of fatwa institutions in Indonesia, such as the fatwa institutions of the Indonesian Ulema Council (MUI), the *Muhammadiyah Tarjih Council*, and *Bahtsul Masail NU*, while their benefits are to support the theological beliefs of Muslims that Islamic teachings can be applied anywhere and at any time. It is also hoped that the findings from this research can contribute to a better understanding of how fatwa institutions in Indonesia respond to contemporary issues. In addition, this research adds to the body of knowledge in the field of Islamic law and can be a resource for those conducting further research, especially those who want to learn more about institutions that issue fatwas in Indonesia.

2. Legal Material and Methods

The research method used in this research is qualitative analysis, namely a technique that emphasizes observation full of in-depth appreciation.¹⁰ This research uses a normative-historical approach, with content analysis related to fatwas in response to contemporary issues carried out by fatwa institutions in Indonesia. The fatwa institutions in question are centered on the Indonesian Ulema Council (MUI), the *Muhammadiyah Tarjih Council* and *Bahtsul Masail Nahdlatul Ulama (NU)*. This research is presented in written form using primary and secondary sources. Data collection was carried out through literature studies and fatwas issued by fatwa institutions in Indonesia that respond to contemporary issues. This research is descriptive-analytic in nature, namely a type of research that involves the

⁷ Abdi Wijaya, "Respon Lembaga Fatwa Terhadap Isu Fiqih Kontemporer", *Jurnal Penelitian Pendidikan Guru Sekolah Dasar*, no. 6 (2019): 181.

⁸ Abd. Rauf Amin, *Mendiskusikan Pendekatan Marginal Dalam Kajian Hukum Islam* (Cet. I; Yogyakarta: Cakrawala Publishing, 2009), 9.

⁹ Eko Siswanto, and Athoillah Islamy. "Fikih Moderasi Beragama Dalam Kehidupan Bernegara di Indonesia." *Al-Adalah: Jurnal Hukum Dan Politik Islam* 7, no. 2 (2022): 198-217.

¹⁰ Yoni Ardianto, "Memahami Metode Penelitian Kualitatif", *Djkn*, 2, (2019), 2.

process of summarizing and collecting data and then analyzing the data that has been collected and compiled using the concepts that are the basis for obtaining a clear understanding. Data were analyzed in three stages, first, the description began by explaining the nature of the fatwa. The next stage is the existence of a fatwa institution in Indonesia by looking at the tendency for associative data to be interpreted rationally and systematically. The third is to carry out an analysis of the collected data, which the researcher then takes and draws conclusions from the discussion that has been presented systematically.

3. Results and Discussion

3.1 The Nature and Importance of Fatwas

Fatwa in the Big Indonesian Dictionary is defined as a decision in an Islamic religious matter given by a mufti or ulama regarding an issue.¹¹ In Arabic the term al-fatwa (الفتوى) or al-futya (الفتي) means answers to questions not found in Islamic legal literature.¹² In al-Fayumi's view, fatwa is the meaning of words *al-fata* الفتي is a variation of the strong youth. That a fatwa giver must give a fatwa with strong arguments.¹³ Furthermore, al-Zamakhshari defined a fatwa as a legal explanation of questions by a certain person or group.¹⁴ From these two views, the author concludes that the essence of a fatwa is a form of answer from a mufti to a question from a mustafti based on a strong argument.

Fatwa can be seen as an explanation of sharia law on a particular subject, making it similar to a method of legal examination of sharia propositions (*ijtihad*). The basis of this idea is *ijtihad* which is the only method that can be used to determine sharia laws from their postulates. Thus, a mufti is no different from a mujtahid, namely a person who uses all his knowledge to explore laws from the Koran and hadith, which are the two main sources of Islamic law. The main function of a fatwa is *tabyin* and *tawjih*. In a society that truly wants to exist, the laws which are the practical rules of society must be explained. This is what is meant by *tabyin*. Meanwhile, *taujih* or enlightenment is guidance for the wider community regarding modern religious issues.¹⁵

Apart from the function of a fatwa as *tabyin* and *taujih*, a fatwa also has a strategic and crucial position, because as stated by Imam ash-Syathibi, a mufti (fatwa giver) is a person chosen to be the caliph and successor of the Prophet, as stated in the narrated hadith. by Abu Dawud and Tirmidhi that "the scholars are the descendants of the prophets" in conveying the Shari'a, teaching people, and warning them to be alert and careful.¹⁶

¹¹ Pusat Bahasa Kementerian Pendidikan dan Kebudayaan, Kamus Besar Bahasa Indonesia, (Jakarta, 2008), 409.

¹² Abu al-Hasan Ali bin Muhammad bin Ali al Husaini al Jarjani, *At-Ta'rifat* (Beirut- libanon: Dar al kutub al ilmiah, 2003), 32.

¹³ Ahmad bin Muhammad bin Ali al-Muqri Al-Fayumi, *Al-Mishbah al-Munir Fi Gharib al-Syarh al-Kabir Li al-Rafi'i* (Beirut: Dar Al-Kutub Al-Ilmiyyah, 2010), 2.

¹⁴ Abu Al-Qasim Al-Zamakhshari, *Tafsir Al Kasysyafan Haqaiq Ghiwamid Al Tanzil Wa 'Uyun Al Aqawil Fi Wujuh Al Ta'wil*, II (Beirut: Dar al Kutub al Ilmiyah, 1995), 395.

¹⁵ M. Erfan Riadi, "Kedudukan Fatwa Ditinjau Dari Hukum Islam Dan Hukum Positif (Analisis Yuridis Normatif)", 472.

¹⁶ As-Syatibi, *Al-Muafaqat*, Juz. 5 (As-saudiah: Dar ibnu Affan, 1997), 17.

Therefore, fatwa plays an important role in Islamic law because it expresses the thoughts of fuqaha regarding the legal position of a newly discovered social problem and is one of the legal institutions that has the authority to answer or establish law on a new problem when there are no explicit legal rules in place. In the Qur'an, as-sunnah, or ijmak, let alone the opinions of previous jurists.¹⁷ A fatwa has a stronger character, because a fatwa is usually synonymous with a legal document which is an answer to a question from the fatwa requester, which in Arabic is *mustafti*. Therefore, an explanation of Islamic law from someone who has knowledge about a problem to someone who does not know about it is called *ifta*.

Islamic law in the form of fatwa, such as the fatwa decision of the Indonesian Ulama Council or other institutions, which is a formal form of Islamic law, is a legal interpretation based on cases. Regardless of the extent of legal advice contained in a fatwa, applicants are not required to comply with all of its recommendations. This is in accordance with what Alfitri Johar stated that a Muslim cannot oppose a fatwa if the fatwa is based on arguments because the fatwa is only religiously binding and not legally binding. Muslims cannot oppose it if the fatwa is supported by valid arguments or texts, which are acceptable and in accordance with sharia.¹⁸

Fatwas can be issued individually by individuals and can be public or collective through fatwa institutions or organizations that have the authority to issue fatwas. Meanwhile, in terms of the nature of the fatwa office, it can be non-formal or semi-formal. Therefore, as opposed to court institutions, the decisions produced by fatwa institutions are different. Judicial bodies are government agencies or government representatives, so their decisions are usually final and enforceable. However, fatwa authorities are different from government institutions because their decisions are optional and cannot be forced, but their development is carried out outside the government.¹⁹

A mufti's opinion may actually have been expressed in fiqh books, but the person asking for the fatwa may still not understand it or have not found it. According to the ulama, a mufti must meet certain criteria to become a mujtahid, so that parties issuing fatwas can position themselves to be able to renew their fatwas, especially in relation to new legal problems that arise in society. Therefore, in its development, the fatwa currently issued by the institution that issued the fatwa will most likely experience changes from time to time as a result of the social dynamics faced by society.

The existence of fatwas is becoming increasingly important to answer contemporary issues that are increasingly developing rapidly, in line with the development of social media and the dynamics of society. Apart from that, fatwas also play an important role in

¹⁷ Maria Ulfah Syarif, et al. "The Existence of Sharia Courts in the United Kingdom." *Al-Adalah: Jurnal Hukum dan Politik Islam* 8, no. 2 (2023): 207-215.

¹⁸ Al-Fitri Johar, "Kekuatan Hukum Fatwa Majelis Ulama Indonesia (MUI) Dari Perspektif Peraturan Perundangan-Undangan Di Indonesia", 5 (2020), 2.

¹⁹ Ian Rakhmawan Suherli, Iu Rusliana, and Pandu Pribadi. "Kelemahan Fatwa dan Implementasinya dalam Pengembangan Ekonomi dan Keuangan Kontemporer." *TAFALQUH: Jurnal Hukum Ekonomi Syariah Dan Ahwal Syahsiyah* 7, no. 1 (2022): 65.

resolving disputes between individuals or between groups in society. For example, through fatwas we can prevent violence and develop a process of dialogue and mutual understanding. Apart from that, fatwas can also be used to clarify and correct misunderstandings about Islam and its teachings.

Fatwa is binding but not regulated by law, so it is different from positive law which has binding force for all citizens. Therefore, in order for a fatwa to have power in people's lives, it needs to be transformed into law so that a fatwa is not just issued without being implemented. The scope of phenomena that receive fatwas includes marriage, economic, social, political and other problems that develop dynamically in the daily lives of society, especially Muslims.

3.2 The Existence of Fatwa Institutions in Indonesia

Various fatwa institutions have existed in Indonesia to represent the application of Islamic law. The public is more familiar with the MUI as a body that issues fatwas in an effort to overcome various religious problems. However, there are also Islamic institutions outside the MUI such as Muhammadiyah, NU, and other groups which have departments tasked with conducting research and recommending group positions (even positions) on socio-legal issues. Of the three institutions, MUI is the only institution formed by the government, while the others were formed by Islamic community organizations.²⁰ Each institution that issues fatwas has rules for choosing which fatwa they will issue.

Ahmad Insyah Ansori and Moh. Ulumuddin both said that the existence of Islam in Indonesia was greatly influenced by the Indonesian Ulama Council, an organization whose members are Muslim scholars. This organization sees itself as a group or forum that brings together academics from various groups to build relationships and produce *ukhuwah Islamiyah* in Indonesia. The Indonesian Ulema Council is a collection of various religious organizations in Indonesia, such as Nahdlatul Ulama and Muhammadiyah. Unlike other religious institutions, MUI also emphasizes its existence as a fatwa institution for the government and the general public.²¹

3.2.1 Manhaj of the Indonesian Ulema Council (MUI) in giving a fatwa

The MUI has issued a number of fatwas in response to developing and actual Islamic legal issues occurring in society. An MUI fatwa is a decision or recommendation made by the MUI regarding a legal issue that occurs in the daily lives of Muslims. Even though the MUI fatwa is not included in the category of positive law and does not have legal force, it is not permitted to impose one's will and cannot use state resources such as the police and prosecutors, unless the contents of the MUI fatwa have been adopted as a law or regional regulation. In essence, the MUI fatwa is only an opinion or statement, does not even bind

²⁰ Husaini Husaini, and Athoillah Islamy. "Harmonization of Religion and State: Mainstreaming the Values of Religious Moderation In Indonesian Da'wah Orientation." *Al-Adalah: Jurnal Hukum Dan Politik Islam* 7, no. 1 (2022): 51-73.

²¹ Ahmad Insyah Ansori, and Moh Ulumuddin. "Kedudukan Fatwa Majelis Ulama Indonesia (MUI) Dalam Hukum Islam." *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 5, no. 1 (2020): 37-56.

Muslims themselves, and cannot be enforced, let alone be the only justification for imposing punishment for criminal acts.²²

In issuing a fatwa, the MUI has its own manhaj so that in chapter 2, articles 2 and 3 in the Decree of the Leadership Council of the Indonesian Ulema Council it is explained that the preparation of the fatwa must be carried out collectively by an institution called the Fatwa Commission and the fatwa must be based on the strongest arguments, such as the Qur'an, hadith, ijmak, kiyas, and other legal propositions that are *mu'tabar*.²³

The steps used to carry out the process of determining a fatwa are as follows:

- a. Every problem raised or faced by the MUI, a commission meeting is held to determine the nature and location of the problem to be discussed.
- b. Experts on the issues under consideration are presented at commission meetings.
- c. After hearing and considering the opinions of experts, the ulama studied the opinions of the imams of the madhhab and the fuqaha, taking into account the reasons put forward in various forms of *istidlal* and their benefits for the people. This assembly can declare an opinion as a fatwa if the opinions of the ulama agree or if only one ulama has an opinion.
- d. In the event of differences of opinion among the ulama, the commission will choose one opinion through *tarjih* and issue a fatwa based on that opinion.
- e. After considering *mulhaq bih*, *mulahaq ilaih*, and *wajh al-ilhaq*, the commission can carry out *ilhqu al-masail bi nazhirih* if the *tarjih* does not provide the desired results.
- f. In the event that the *ilhaq* method does not provide satisfactory results, the commission can carry out *jama'i ijtihad* using *al-qawa'id al-ushuliyyah* and *al-qawa'id al-fiqhiyyah*.

The position of *qawa'id fiqhiyyah* as a proposition (*'adillah al-ahkam*) in MUI fatwas is positioned with the position of the sunnah in the Qur'an, namely as *ta'kid (mu'akkid)*, *tabyin (mubayyin)*, and *taqrir (taqnin)*. The position of *qawaid fiqhiyyah* as *ta'kid/muakkid* is applied if the legal issue discussed by the MUI has a text textually and *qat'iy*, in this case the MUI includes fiqh rules which have the same substance as the text used as an argument to resolve the problem. Meanwhile, if the legal issues discussed by the MUI, the text included is of a general nature, then the position of *qawa'id fiqhiyyah* is used as *tabyin/mubayyin*. If the issue being discussed is not found in the text and is not *qat'i*, then the position of *qawaid fiqhiyyah* is used as a proof.²⁴

The MUI's authority to issue fatwas includes the following matters:²⁵

²² Ahmad Badrut Tamam, "Kedudukan Fatwa Majelis Ulama Indonesia (MUI) Dan Fatwa Dewan Syariah Nasional (DSN) Dalam Sistem Hukum Indonesia." *Al-Musthofa: Journal Of Sharia Economics* 4, no. 2 (2021): 175.

²³ Peraturan Organisasi Majelis Ulama Indonesia', (2015), 75.

²⁴ Moh Mundzir, "Metode Penetapan Fatwa Majelis Ulama Indonesia (Analisis Penggunaan Qawaid Fiqhiyyah Sebagai Dalil Mandiri Dalam Fatwa)", *The Indonesian Journal of Islamic Law and Civil Law*, 2, no. 1 (2021): 16.

²⁵ Peraturan Organisasi Majelis Ulama Indonesia', 81–82.

- a. Sharia issues in general as well as in the areas of faith, sharia, social culture, society and the environment, as well as morals, by always adhering to the principles of truth and purity in the practice of religion.
- b. Apart from social issues, medicine, food and cosmetics (POM), issues related to advances in science and technology, as well as sharia economic issues, the authority to give a fatwa as referred to in paragraph (1) also applies to issues of beliefs developing in society.

3.2.2 Manhaj Majelis Tarjih (MT) Muhammadiyah in Giving Fatwa

After the XVII Muhammadiyah Congress which took place in Yogyakarta in 1928, the Tarjih Council was founded. KH Mas Mansur took the initiative to form this assembly. Mansur was then trusted to be the first chairman. The difficulties of Muhammadiyah members in facing khilafiyah issues in everyday life became the impetus for the formation of this assembly. It is feared that if left unchecked, this will cause disputes and even divisions among Muslims, including members of Muhammadiyah. Muslims, including those in Muhammadiyah, are divided.²⁶

However, since its inception, Muhammadiyah has carried out collective *ijtihad* (*ijtihad jama'i*). The institution which initially dealt with matters of *mahdhah* worship was responsible for carrying out this task. However, along with its development, this assembly has carried out *ijtihad* in modern fiqh issues such as bank interest, insurance, family planning, and so on.²⁷ This shows that problems have experienced significant developments. MT Muhammadiyah has the confidence to conduct research on socio-religious issues, because these issues arise in society and are relative. The Qur'an and sunnah *al-maqbulah* are considered the main sources of Islamic law by Muhammadiyah. Meanwhile, Muhammadiyah's *ijtihad* covers topics covered in the *zanny* dalil and topics not specifically covered in the Qur'an and sunnah.²⁸

MT Muhammadiyah's *ijtihad* method uses three different approaches in legal *istinbath*, namely *al-bayani* (semantic), which uses a linguistic approach, *ta'lili* (rational) and *istislahi* (philosophical), which uses an approach that focuses on benefit. Meanwhile, the efforts made by MT Muhammadiyah in the event of a conflict between several arguments, each of which presents different legal provisions (*ta'arudh al-adillah*) are as follows:

- a. *Al-jam'a al-taufiq*, namely accepting all propositions even though they are explicitly contradictory. Meanwhile, for practical needs, MT Muhammadiyah invites its followers to choose one of these propositions.
- b. *Al-tarjih*, namely choosing stronger propositions to be implemented and abandoning weaker propositions.

²⁶ Sopa, "Manhaj Tarjih Muhammadiyah Dan Implementasinya Dalam Hisab Arah Kiblat Dan Waktu-Waktu Shalat", (2020), 1.

²⁷ Fathurrahman Djamil, *Metode Ijtihad Majelis Tarjih Muhammadiyah* (Cet. 1; Jakarta: Logos Publishing House, 1995), xviii.

²⁸ Keputusan Munas Tarjih XXV Tentang Manhaj Tarjih Dan Pengembangan Pemikiran Islam', 2000 7.

- c. *Al-naskh*, that is, implementing the proposition that appeared later.
- d. *Al-tawaqquf*, namely stopping research on the propositions used by looking for new propositions.

The approaches used by MT Muhammadiyah in determining *ijtihadiah* law are *al-tafsir al-ijtima' al-mufassir* (hermeneutics), *al-tarikh* (historical) and *al-antrubuluji* (anthropological). The approach used by MT Muhammadiyah in establishing laws is *ijmak*, *kiyas*, *masalih mursalah* and '*urf*'.²⁹ This manhaj tarjih is a refinement of the previous manhaj tarjih. Compared to the previous manhaj tarjih, this manhaj generally shows very significant developments. The systematic layout of the manhaj building explains the process of *fiqh*.³⁰ The way this manhaj is arranged also shows that the problems that arise are increasingly complicated.

3.3.3 Manhaj Bahtsul Masa'il Nahdlatul Ulama (NU) in Giving Fatwa

As an Islamic social and religious group, Nahdlatul Ulama (NU), which was founded in Surabaya on January 31, 1926 AD to coincide with 16 Rajab 1344 H. This mass organization was founded with the aim of upholding Islamic principles, which are based on the teachings of *ahlussunnah wa al-jama'ah*, as well as developing and practicing it. As time progressed and many problems emerged which were related to Islamic law which were not in balance with the reference texts (*maraji*) so that the existing texts were only able to answer some of these religious issues, the Nahdlatul Ulama was formed to answer them. These issues are called Bahtsul Masail. As a result, many problems remain unresolved due to limitations *qaul ulama*.

The Bahtsul-Masail tradition among NU has been considered a prestigious study forum that uses the *istinbath al-hukmi* pattern with the *qauli* method, which prioritizes the works of Islamic school scholars who are considered to have made significant contributions to the progress of Islamic science and the resolution of social problems that arise. faced by Islamic society. The use of this technique earned the Nahdliyin a reputation as traditionalists, who were more than mere followers of prosperous villages with their culture. Apart from that, the NU group shows that they uphold the traditions taught by previous ulama both in thought and practice.³¹ This was done so that the Nahdliyin would not leave the tracks that had been carried out by classical ulama who had the capacity for *ijtihad*.

Through Ba'ts al-Masâil, the *jama'i* (collective) is responsible for establishing laws. The process involves taking inventory of the problem first before socializing it with Syuriah members. After that, Syuriah members looked for solutions in the books of the

²⁹ Keputusan Munas 8.

³⁰ Kholidah, Nawir Yuslem, and Ahmad Qorib, "Dinamika Manhaj Tarjih Muhammadiyah Dalam Merespon Persoalan-Persoalan Hukum", *Jurnal Hukum Dan Ekonomi Islam*, 20, no. 1 (2021), 52.

³¹ Fathonah K. Daud, and Mohammad Ridlwan Hambali. "Metode Istinbath Nahdlatul Ulama (NU): Kajian atas Strategi Fatwa dalam Tradisi Bahts al-Masail di Indonesia." *Millennial: Jurnal Pendidikan dan Studi Islam* 2, no. 1 (2022): 3-4.

madhhab (especially the Syafi'i school of thought which was considered *mu'tabar*). They then presented it for discussion at the central level in the Ba'ts al-Masâil debate.³²

In the implementation system for Islamic legal decision making, three methods are used, namely use *taqrir jama'i*,³³ *ilhaq al-masail bi nazhairiha*³⁴ and *istinbath jama'i*,³⁵ all three are in accordance with the results of the National Conference of Alim Ulama & Konbes NU in Surabaya in 2006. However, unfortunately, the decision regarding the *taqrir jama'i*, *ilhaqul-masail bi nazhairiha* and *istinbath jama'i* it does not yet have operational instructions for implementing the method of determining Islamic law in Bahtsul Masail Nahdlatul Ulama.³⁶ Therefore, the National Conference of Alim Ulama Nahdlatul Ulama needs to formulate technical instructions so that these decisions can be operationalized.

Having a ready-to-use and approved *istinbath* method is very important. This is due to the fact that many new fiqh cases can arise where the poles, either in the form of *qaul* or *wajih*, cannot provide a solution. With regard to these new fiqh cases, NU established the following procedure through the Lampung National Conference in 1992: "In the event that a problem or case has not been regulated in the fiqh books, the problem or case is resolved using the procedure of *ilhaqul-masail bi nadha 'iriha* in congregation. A mulhiq who is an expert does *ilhaq* by considering *mulhaq* and *mulhaq bihi*. So that *qawa'id fiqhiyyah* can be used as a methodological framework in this *ilhaqul-masail bi nadha 'iriha* process.

If the *ilhaq* procedure cannot resolve fiqh cases, NU stipulates that *jama'i istinbath* must be carried out in those cases. The problem is how *istinbath jama'i*, which involves the implementation of *qawaid ushuliyah*, is regulated in Nahdlatul Ulama. The implementation of *istinbath jama'i* which uses the *bayani*, *qiyasi*, and *istishlahi* or *maqashidi* methods simplifies *istinbath al-ahkam* while still referring to the ushul fiqh books.³⁷

Based on the description above, it can be seen that in terms of methods for determining Islamic law and the systematics of drafting decrees, as well as sessions for determining fatwas, each institution has its own procedures, some of which are the same. However, of the three areas of fatwa above, the MUI is flexible in using legal determination methods and is not fixated on one particular school of thought as a reference. This is clearly different from Bahtsul Masail which relies a little on the words of school scholars. Meanwhile, the Majelis Tarjih in establishing laws, a fatwa drafting system, and is not tied to a particular school of thought either, but they return a little to the Koran and hadith.

³² Fathonah K. Daud, and Mohammad Ridlwan Hambali. "Metode Istinbath Nahdlatul Ulama (NU): Kajian atas Strategi Fatwa dalam Tradisi Bahts al-Masail di Indonesia", 10.

³³ Taqrir Jama'i adalah upaya kolektif untuk menentukan pilihan terhadap satu diantara beberapa pendapat.

³⁴ Ilhaq adalah menyamakan hukum suatu kasus dengan kasus yang telah ada jawabannya dalam kitab (menyamakan suatu kasus dengan kasus lain yang sudah ada hukumnya dalam kitab).

³⁵ Istinbath jama'i adalah upaya secara kolektif untuk mengeluarkan hukum syara" dari dalilnya dengan menggunakan qawaid ushuliyah.

³⁶ Lembaga Bahtsul Masail, 'Pedoman Bahtsul Masail Nahdlatul Ulama', 2024, 10.

³⁷ Lembaga Bahtsul Masail, 'Pedoman Bahtsul Masail Nahdlatul Ulama', 2024, 10. 34–35.

3.3 Fatwa Institutions' Absorptive Capacity for Contemporary Legal Problems

Fatwa functions as a response or answer to socio-religious problems related to Islamic law. Fatwas exist as the result of *ijtihad* by *ulama*, thus showing that Islamic law is always responsive to contemporary issues.³⁸ Several contemporary issues, especially in the economic sector, which have been answered by several fatwa institutions in Indonesia through their fatwas are presented in the following table.

Table 1. The absorption capacity of fatwa institutions towards contemporary issues.

No.	Fatwa Institute	Fatwa that Responds to Contemporary Issues
1	Indonesian Council of Ulama (MUI)	Fatwa on Sharia Exchange Traded Funds (ETF); Fatwa on Sharia Pure Endowment Life Insurance Products; Fatwa concerning the Application of Sharia Principles in Infrastructure Provision Activities through Government and Business Entity Cooperation Schemes (KPBU) Based on Availability of Services (Availability Payment); Fatwa on <i>Murabahah</i> Agreements in Sharia Banking; MUI Fatwa Number 24 of 2017 concerning Guidelines for <i>Mu'amalah</i> even and Interacting Using Digital Platforms
2	Majlis Tarjih Muhammadiyah (MTM)	Fatwa regarding the prohibition of bank interest because it is usury; Fatwa on Smoking Law which decrees that smoking is haram
3.	Bahtsul Masail Nahdlatul Ulama (BM-NU)	The fatwa regarding Shopee Coins agreed that in terms of the transaction between the buyer and the Shopee account owner is a <i>wakalah</i> agreement,

Source: Primary data, 2023 (Edited).

3.3.1 Fatwa Absorption Capacity of the Indonesian Ulema Council (MUI)

Quoted from MUI digital, since the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) was founded, 156 have been ratified, including the three most recent ones from January to September, namely First, Sharia Exchange Traded Fund (ETF) Fatwa; Second, Fatwa on Sharia Pure Endowment Life Insurance Products; Third, Fatwa on the Application of Sharia Principles in Infrastructure Provision Activities through the Government and Business Entity Cooperation Scheme (KPBU) Based on Service Availability.³⁹

However, of the three fatwas, researchers only managed to find a fatwa regarding Sharia Exchange Traded Funds (ETF), namely Mutual Funds⁴⁰ Sharia takes the form of a

³⁸ Muhammad Shuhufi, et al. "Islamic Law and Social Media: Analyzing the Fatwa of Indonesian Ulama Council Regarding Interaction on Digital Platforms", 823-843.

³⁹ Majelis Ulama Indonesia, "DSN MUI telah Sahkan 156 Fatwa per September 2023" dalam <https://mui.or.id/berita/dsn-mui/56587/dsn-mui-telah-sahkan-156-fatwa-per-september-2023/>

⁴⁰ Reksa Dana (RD) adalah wadah yang dipergunakan oleh Manajer Investasi (MI) untuk menghimpun dana dari investor untuk diinvestasikan dalam portofolio Efek, portofolio investasi kolektif, dan/ atau instrumen keuangan lainnya.

Collective Investment Contract (KIK)⁴¹ whose investment units are traded on the Stock Exchange. In the fatwa it is explained that: Sharia ETF offering and transaction activities may be carried out by following the provisions and limitations contained in the MUI fatwa. It is further explained that the characteristics of a Sharia Exchange Traded Fund (ETF) are as follows;

- a. Sharia ETFs must not conflict with sharia principles, namely, among others; must avoid usury, *gharar*, *maysir* and *dharar*;
- b. Sharia ETFs can be traded in the primary market and secondary market simultaneously in accordance with applicable regulations, as long as they are still traded on the Stock Exchange;
- c. Creation Units in the primary market can be transacted in UP units in the secondary market, and vice versa, purchases of UP in the secondary market can be transacted in the form of Creation Units in the primary market.⁴²

Furthermore, the National Sharia Council-Indonesian Ulema Council (DSN-MUI) has issued a statement relating to transactions via *murabahah* in sharia banking practices. For example, in Aceh, DSN-MUI has issued a fatwa regarding *murabahah* carried out by sharia banking in Aceh even though its implementation has not been optimal.⁴³ Likewise, MUI fatwa Number 24 of 2017 concerning guidelines for *mu'amalah* instead and interacting via digital platforms is a response to the use of social media. From a sociological perspective, fatwas are used as guidelines for interacting better so that they can become social controls so that they are wise in using social media.⁴⁴ Several MUI fatwas show the MUI's enormous capacity to respond to contemporary issues through the many fatwas issued. As a community organization that is directly connected to the government, the presence of the MUI fatwa institution can maintain the existence of Islamic law amidst the progress of civilization and prove that Islamic law is always responsive.

3.3.2 Absorption Capacity of Majelis Tarjih Muhammadiyah (MTM) Fatwa

One of the Majelis Tarjih Muhammadiyah fatwas that researchers managed to obtain was a fatwa on bank interest. In this decision, the Majelis Tarjih Muhammadiyah decided that bank interest is usury because (1) bank interest is an addition to the principal of the loaned capital, in this case Allah says, and if you repent (from taking usury), then the principal of your wealth will be yours; (2) these additions are binding and agreed upon, while those which are voluntary and not agreed upon do not constitute usury.⁴⁵

⁴¹ Kontrak Investasi Kolektif (KIK) adalah kontrak arttaraMI dan Bank Kustodian (BK) yang secara kolektif mengikat investor; MI berwenang untuk mengelola portofolio investasi kolektif, dan BK berwenang untuk melaksanakan penitipan kolektif.

⁴² Tamam.No: NO: I54, DSN-MUI/ 2023 Tentang Exchange Traded Fund (ETF) Syariah.

⁴³ Azharyyah Ibrahim, and Abdul Jalil Salam. "A comparative analysis of DSN-MUI fatwas regarding *murabahah* contract and the real context application (A study at Islamic Banking in Aceh)", 372-401.

⁴⁴ Muhammad Shuhufi, et al. "Islamic Law and Social Media: Analyzing the Fatwa of Indonesian Ulama Council Regarding Interaction on Digital Platforms", 823-843.

⁴⁵ Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia, 2023, 1.

There is one fatwa that has always been a hot topic of discussion until now which was successfully decided by the Muhammadiyah Tarjih Council, namely the fatwa regarding the law on smoking. In the fatwa it was decided that smoking is haram because:

- a. Smoking is included in the category of *khobaits* acts that are prohibited in QS. 7: 157.
- b. The act of smoking contains an element of falling into perdition and even suicide slowly, thereby contradicting the prohibition of the Qur'an in QS 2: 195 and 4: 29.
- c. The act of smoking endangers oneself and other people who are exposed to cigarette smoke because cigarettes are an addictive and dangerous substance as agreed by medical experts and academics so that smoking is contrary to the sharia principle in the Prophet's hadith that there is no action that endangers oneself and endangers others.
- d. Cigarettes are recognized as addictive substances and contain dangerous toxic elements, although not directly but over a certain period of time, so the act of smoking is included in the category of doing something that weakens, so it is contrary to the hadith of the Prophet which prohibits everything that is intoxicating and weakening.
- e. Smoking clearly endangers the health of smokers and those around them who are exposed to cigarette smoke, so spending money to buy cigarettes means committing a wasteful act which is prohibited in Q.S. 17: 26-27,
- f. Smoking is contrary to the elements of sharia objectives (*maqasid asy-syariah*), namely (1) protection of religion (*hifdz al-din*), (2) protection of body/soul (*hifdz an-nafs*), (3) protection of reason (*hifdz al-'aql*), (4) family protection (*hifdz an-nasl*), and (5) property protection (*hifdz al-mal*).⁴⁶

Several fatwas from the Muhammadiyah Tarjih Council also show the absorption capacity of fatwa institutions other than the MUI which are involved in responding to contemporary issues. MT Muhammadiyah also strengthens the position of Islamic law in responding to contemporary issues even though the quantity of fatwas is not as large as the MUI. Even though MT Muhammadiyah is based on an Islamic community organization, its existence in society is also worthy of consideration considering that there are quite a lot of Muhammadiyah congregations in Indonesia.

3.3.3 Absorption Capacity of Bahtsul Masail Nahdlatul Ulama (BM-NU) Fatwa

Shopee Coins are loyalty points on the Shopee platform. Shopee account holders can earn Shopee Coins by purchasing goods using the Shopee Guarantee system. Buyers can use it to offset the transaction amount belonging to their Shopee account when making purchases in the Shopee application. Responding to transactions like this, the Nahdlatul Ulama Bahtsul Masail Council tried to answer this problem by issuing a Bahtsul Masail decision which was successfully decided on November 13, 2023.

Based on the results of the Bahtsul Masail decision, it was agreed that in terms of the transaction between the buyer and the Shopee account owner, it is a *wakalah* agreement, whereas based on the existing Shopee Service Terms, the status of Shopee Coin is as a

⁴⁶ Fatwa Majelis Tarjih Dan Tajdid Pimpinan Pusat Muhammadiyah No. 6/Sm/Mtt/Iii/2010 Tentang Hukum Merokok.

reward in the form of a promise (*wa'du*) in the form of a discount from Shopee. addressed to the transaction party/account owner, as a representative. It is further stated that the account owner may not take the remaining money as profit but must return it to the buyer as the owner of the remaining money, unless it is suspected that there is willingness on his part.

The mu'tabar reference books used as reference material by Bahtsul Masa'il NU in answering this problem to strengthen this decision include: Hasyiyatul Jamal juz 13, h. 15, Fathul muin juz. 3, p. 154-156, Nihayatul Muhtaj, juz. 3, p. 595 and others.⁴⁷ The fatwa of Bahtsul Masail Nahdlatul Ulama shows that this Islamic community organization also plays a role in responding to contemporary issues. Even though the quantity is not as large as the MUI fatwa, the absorption capacity of the NU fatwa institution has great significance in society, especially as the NU congregation is considered to be the largest and is spread throughout Indonesia.

4. Conclusion

A fatwa is an opinion issued by a mujtahid or faqih in response to a request for a fatwa in a case that is not binding. Currently, fatwas as a product of Islamic law have an important role as an effort to respond to contemporary issues. Fatwas are issued by fatwa institutions such as the Indonesian Ulema Council (MUI), Majelis Tarjih Muhammadiyah and Majelis Bahtsul Masail Nahdlatul Ulama (NU). Each of the three fatwa assembly institutions has its own absorption capacity as determined by its laws, such as the MUI fatwa regarding Sharia ETF transactions which can be carried out by following the provisions and limitations that have been set. Majelis Tarjih Muhammadiyah determined that interest is usury and the same applies to smoking, which is haram. Majelis Bahtsul Masail concluded that the right to shopee coin is a *wakalah* contract, and the remaining funds must not be taken but must be returned to the buyer as the owner of the remaining money, unless there is suspicion of his willingness. Therefore, in responding to contemporary problems, especially contemporary problems occurring in Indonesia, fatwas play an important role. The reason is, the majority of Muslims need legal answers that solve problems and are contextual in nature. Thus, it is very important for the Muslim community to always follow developments in existing fatwas. However, research regarding the absorption capacity of fatwa institutions towards contemporary issues still needs to be carried out empirically so that it can be explored in more depth to what extent the fatwa institutions have responded to contemporary issues and their influence in society.

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