

Development Method for Determining the Law of Indonesian Ulama Council (MUI) Post Reform (Case Study of Fatwas related to Law)

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Abstract

This study aims to analyze the development of the method of determining the law by the Indonesian Ulama Council after the reformation in the case of legal fatwas. Data collection was carried out by way of interviews with MUI administrators throughout Indonesia represented by the fatwa commission which produced fatwas related to crucial issues of public interest and political fatwas that greatly influenced the political situation in Indonesia. The location of this research was conducted at the Central MUI institutions, DKI Jakarta Province, West Java Province, East Java Province, and West Sumatra. The results obtained are that the method used by the MUI runs in accordance with established procedures and standards in the MUI and does not shift from the previous period. The legal determination carried out by MUI has a special style compared to other institutions, namely a more moderate process, meaning that it is not extreme or radical. In setting a fatwa decision, the MUI is not influenced by political pressures from outside that surround it even though the pressure has a psychological impact on the perpetrators of the implementation of the law. The determination even though it looks like there is pressure, but in reality it is the response of the MUI itself. This is evidenced from several cases of MUI fatwa related to the needs of many people who are able to meet the sense of community law.

Keywords : MUI, Fatwa, Maslahat

Abstrak

Penelitian ini bertujuan untuk menganalisis perkembangan metode penetapan hukum oleh Majelis Ulama Indonesia pasca reformasi dalam kasus fatwa hukum. Pengumpulan data dilakukan dengan cara wawancara dengan pengurus MUI di seluruh Indonesia yang diwakili oleh komisi fatwa yang menghasilkan fatwa terkait isu-isu krusial kepentingan publik dan fatwa politik yang sangat mempengaruhi situasi politik di

Indonesia. Lokasi penelitian ini dilakukan di lembaga MUI Pusat, Provinsi DKI Jakarta, Provinsi Jawa Barat, Provinsi Jawa Timur, dan Sumatera Barat. Hasil yang diperoleh adalah metode yang digunakan MUI berjalan sesuai dengan prosedur dan standar yang telah ditetapkan di MUI dan tidak bergeser dari periode sebelumnya. Penetapan hukum yang dilakukan MUI memiliki corak khusus dibandingkan dengan lembaga lain, yaitu proses yang lebih moderat, artinya tidak ekstrim atau radikal. Dalam menetapkan putusan fatwa, MUI tidak terpengaruh oleh tekanan politik dari luar yang melingkupinya meskipun tekanan tersebut berdampak psikologis bagi pelaku implementasi hukum. Tekad tersebut meski terlihat seperti ada tekanan, namun pada kenyataannya merupakan respon dari MUI sendiri. Hal ini dibuktikan dari beberapa kasus fatwa MUI terkait kebutuhan banyak orang yang mampu memenuhi rasa hukum masyarakat.

Kata Kunci: MUI, Fatwa, Maslahat

INTRODUCTION

Maqâshid al-syarî'ah is the goal of Allah SWT and His Messenger in Islamic law, then *Maqâshid al-syarî'ah* becomes a benchmark in establishing the law, both those that are clear in the text and the values that can be sought in the text. 'Izzuddin bin 'Abd al-Salâm interpreted the *maqâshid al-syarî'ah*:

مقاصد التشريع العامة هي المعان والحكم الملحوظة للشارع في جميع أحوال التشريع أو معظمها بحيث لا تختص بملاحظتها بالكون في نوع خاص من أحكام الشريعة، فيدخل في هذا أوصاف الشريعة و غايتها العامة والمعان التي لا يخلو التشريع عن ملاحظتها (Izzuddin bin 'Abd al-Salâm, n.d., p. 10)

" *Maqâshid al-syarî'ah* is the meaning and wisdom maintained by syari 'in all legal stipulations or even if they are not specifically devoted to maintaining it on every type of law from sharia laws, then includes everything that is given the nature of law and its purpose is inseparable from the syara' in maintaining it"

Furthermore 'Izzuddin ibn 'Abd Salâm explained that all *maqâshid* aims to maintain the existing legal rules using *tahqîq al-masâlih* (realizing benefit) and *dar'u al-mafâsid* (rejecting things that damage) (Izzuddin bin 'Abd al-Salâm, n.d., p. 11).

In line with that, Muhammad Rowwas Qal'arji asserted that Allah SWT prescribes laws relating to the provisions of halal and haram are prescribed

with specific objectives, then those laws must have objectives called *maqâshid al-syarî'ah* (Al-Qal'arji, 1991, p. 24).

According to Wahbah al-Zuhaili, *maqâshid al-syarî'ah* means the values and objectives of shara' which are implied in all or most of its laws. These values and targets are seen as sharia goals and secrets, which are determined by *Shari* in every legal provision (Al-Zuhaili, 1985, p. 748).

According to Muhammad Thohir ibn Âsyur (Asyur, 2001, p. 174), every law prescribed for humans is actually aimed at every law is *maqâshid al-syarî'ah* which is maintained as the purpose of shari'ah. This fact is a definite determination, because God makes everything impossible in vain. This opinion is based on the word of God in the Qur'an Surah al-Dukhan verse 38 "and We did not create heaven and earth and what was between them by playing". and Surah al-Mukminun verse 115: "Do you think that actually, We created you by playing and that you will not be returned to us".

One example of the formation of a law that contains benefits is marriage retirement. Marriage is not intended only to channel the desires of human lust, but the intention is to *hifzh al-nasl* (maintaining offspring) and connecting human life as caliphs on earth, while offspring are only the result of love for the opposite sex (Al-Zahabi, 1968, p. 31).

From the description of the meaning of *maqâshid al-syarî'ah* stated by the experts mentioned above, it is clear to the author that *maqâshid al-syarî'ah* can be described with the following elements, namely: 1) The meanings (*al-ma'âni*) of every existence of Shari'a; 2) The secrets (*asrâr*) of each shari'ah, and; 3) Wisdom (*al-hikam*) from the formation of shari'ah. These three things must be maintained by *shari'a* (*al-malhuzhah li al-syâri'*).

The purpose of the law called *maqâshid al-syarî'ah* is to study the values contained in the law that lead to the contention of the *maslahat*, both getting advantages and replacing disadvantages

Imam al-Haramain can be said to be the first to emphasize the importance of understanding *maqâshid al-syarî'ah* in establishing the law (Mua'llim & YUSDANI, 1999, p. 52).

Determination of *maslahat* as the aim of the discovery of Islamic law is inseparable from differences of opinion among the Usul scholars when

juxtaposed with the Qur'an and Sunnah texts. In general, ulama Ushul believes that texts should take precedence over benefits. They argue that the attainment of *mashlahat* is vulnerable to the measurement of human passions and interests.

Ulama Usul such as Imâm al-Juwaini (Al-Juwaini, n.d., p. 295) and al-Gazâli (Al-Gazâli, 1971b, p. 159, 1971a, pp. 250–259) have imposed limits on this *Maslahat*. Al-Gazali firmly explained that *maslahat* must be determined through matter and existence as well as its level. This provision is very influential on the determination of *maslahat* which is recognized and in line with the texts and which are not in line and rejected by the Qur'an and Sunnah.

Abdullah al-Kamali (Al-Kamâli, 2000, pp. 38–39) explained that if there is a conflict between the *maslahat* and the text, the *maslahat* must take precedence over the text (*taqdim al-mashlahât 'ala al-nushush al-syar'iyat*). They reasoned that many of the Shari'a are general in realizing *mashlahat*.

In the 7th century an opinion emerged that said that if there was a conflict between the *mashlahat* and the text, then the *mashlahat* took precedence as conceived by Najm al-Din al-Thufi (Al-Kamâli, 2000). Al-Thufi explained that if there was a conflict between the texts and the benefits, the benefits must take precedence over the texts by way of *takhshish* and *bayan* (Al-Kamâli, 2000).

The study of *maqâshid al-syarî'ah* leads to the search for and disclosure of the benefits of which is still a method of determining the law by Islamic legal experts until now. Likewise, the determination of the law of new problems that require answers (Supriyadi, 2007, p. 3).

In the practice of establishing law or which is identical with the term *istinbath*¹ law, benefit is a very important part and plays a role in determining legal products and developing the law itself, which is needed by the community at any time. There are many legal products that are determined

¹Kata *Isntinbât* secara etimologis berarti mengambil air dari sumber mata air. Adapun secara istilah *syara' istinbat* diartikan usaha menggali dan menetapkan hukum dari nash al-Quran dan al-Sunnah dengan mengerahkan kesungguhan dan segala kemampuan (potensi ilmu) yang dimiliki.

based on benefit value. Including what was done by the Indonesian Ulama Council which was reflected in various fatwa decisions.

The importance of determining the law with consideration of mashlahat can be exemplified in the issue of the use of zakat. In Surat al-Taubah verse 60, the recipient of zakat is intended for the Eight Asnaf (groups) namely *Fakir*, *Poor*, *Amil*, *Muallaf*, *Riqab* (slave servant), *Ibn sabil* (people who are on their way out of stock), *Garimin* (people who are in debt) and *fi sabilillah*. Generally the Ulama Umar, (2007, p. 156) explained that *fi sabilillah* was generally interpreted as people or troops who fought in the way of Allah SWT in order to uphold the religion of God. This opinion is held by Hanafi, Shafi'i and Maliki groups. While Imam Ahmad included those who were doing worship in the *fi sabilillah* group (Al-Zuhaili, 1985, p. 874).

The Indonesian Ulama has interpreted *fi sabilillah* more broadly than previous understandings as a whole that includes all the interests of Islam and Muslims. This understanding is in line with the understanding of contemporary ulama such as Rasyid Ridha, Sayyid Qutub and al-Maraghi who argue that the meaning of *fi sabilillah* is the benefit of Muslims in general, in religious and state life (Al-Zuhaili, 1985).

The Indonesian Ulama broadens the definition of the Islamic army or those who fight in the way of Allah, encompassing all the interests and benefits of the community as a whole according to the needs of the community. So that various development fields can be financed from zakat in the *fi sabilillah* category. Such as economics and activities that are beneficial to the public, services and smooth pilgrimage, education of the younger generation, public health, empowerment of the role of women, development of science and the defense and security sector (Majelis Ulama Indonesia, 2011, pp. 156–159).

Further issues such as the ruling on the law of the operation of a woman, Yusuf Qardhawi, (1995, p. 422) argues that women are basically allowed to work and it is possible to have to work in certain conditions, for example women whose husbands die while they have the expertise to work to earn a living for their children. The basic law is that women are not obliged to provide for it and they are supported by their husbands.

This opinion is actually based on the benefit to be achieved, even though the Shari'a does not actually require women to work, but for the sake of prosperity, then women may work.

RESEARCH METODOLOGY

This research is part of social research using a qualitative approach with the perspective of legal sociology, because what is used is a dynamic social law phenomenon. This study raises field data using the interview method (Amiruddin & Asikin, 2008, p. 84; Ashshofa, 1996, p. 21). Interviews were conducted with the administrators of the Ulema Council in the Central and in several provinces that could represent the data acquisition that was achieved in relation to the ownership of fatwa decisions in the legal and political fields.

This research is a critical analytic description, where later data obtained from interviews will be tested and shared through Focus Group Discussion (FGD) in the field will be presented with an original appearance as is and using a legal analysis model.

Because this study examines the phenomenon of Islamic law and its method of legal discovery, the approach used in this study is the legal and social approach because it is related to social developments related to legal needs so it is called the sociology of law approach.

The subject of the research is more towards key informants and is chosen based on their involvement in formulating a fatwa issued by the Indonesian Ulema Council Institution where the informant works. This study is more focused on the administrators of MUI in Indonesia, in every province that has fatwas related to legal and political developments. Determination of data sources is done by stratified techniques and snowball sampling. As many as 40 people spread across 8 MUI Institutions, namely Central MUI, DKI Jakarta MUI, West Java MUI, East Java MUI, North Sumatra MUI, West Sumatra MUI, South Sulawesi MUI, and Aceh MUI.

The data collection structure was carried out using interview techniques which were carried out directly to the informants, namely

participation and in-depth interviews. The criteria for determining informants are based on the intensity of contact between informants with the establishment of law in Islam at MUI institutions and triangulation of informants obtained from key informants.

The analysis of this research is focused more on critical interpretation efforts by paying attention to aspects of coherence, authenticity, and independence (Moleong, 2006, p. 286).

This research was carried out through four empirical material analyzes, namely: First, to conduct data reduction, by simplifying, abstracting and transforming rough data that emerged from written notes in the field (field notes). Second, reduce data and direct material in the form of informant experience with ethnographic methods. Third, the presentation of empirical material.

Exposure to empirical material in the form of archetypes of research subjects, begins with the process of reduction which is then presented in the form of organized material by making a structured summary, then the analysis is directed at efforts to formulate concept findings. Fourth, drawing conclusions and verification.

RESULT AND DISCUSSION

Result

Determination of the legal products of the Indonesian Ulema Council is carried out with the flow and procedures that have been determined to be the Basics and Procedure for determining the fatwa carried out by the Indonesian Ulema Council (MUI) and contained in the Indonesian Ulema Council Fatwa Determination Guide Number: U-596 / MUI / X / 1997 was set on October 2, 1997 (Dirjen Bimas Islam dan Haji Kemenag RI, 2003). The basis for the determination of the fatwa was outlined in the second part of article 2 which reads:

1. Every Fatwa Decree must have a basis on the Book of Allah and the Sunnah of the Apostle that is not bad, and not contrary to the benefit of the people.
2. If it is not in the Book of Allah and the Prophet's Sunnah as specified in article 2 paragraph 1, the Fatwa Decree should not be in conflict with *ijma'*, *qiyas* that *mu'tabar*, and other legal arguments, such as *istihsan*, *maslahah mursalah*, and *saddu al-dzari'ah*.
3. Before making the Fatwa Decree, it should be reviewed the opinions of the priests of the previous schools, both relating to the arguments of the law or relating to the argument used by parties of different opinions. The view of experts in the field of issues to be taken in the Fatwa Decree, be considered (Dirjen Bimas Islam dan Haji Kemenag RI, 2003, pp. 4–5)

The method of determining the law used by the Indonesian Ulema Council is in accordance with the method of determining the law of the salaf scholars. However, the Indonesian Ulema Council is more accommodating in using the benefit of the people when determining a legal decision, both in the form of fatwas and appeals and opinions and views of the Ulema Council. The Ulama Council is illustrated in choosing the middle ground method by looking at the opinions of experts in certain scientific fields as material for consideration in determining its fatwa.

Hierarchically the Central Indonesian Ulema Council domiciled in Jakarta and the Regional Indonesian Ulema Council domiciled in the Region, both in the Provinces and in the Regencies / Cities in Indonesia basically do not become a means of intervention from higher to lower. Each Ulema Council, both at the Central and Regional level, has the same authority and independence in establishing the law. The Central Indonesian Ulema Council has the authority to issue fatwas on religious issues that are general in nature and concern the problems of Indonesian Muslims nationally and / or religious issues that occur in the regions.

The existence of a hierarchy between the Central MUI and regional MUI does not affect the degree of fatwa issued. it means that one fatwa cannot cancel another fatwa. Each fatwa stands alone according to the designation of

the fatwa. If a MUI Regional and Central MUI decision is found to have differences in the same problem, the two parties need to meet to find the best solution, so that the ruling does not confuse Muslims (Dirjen Bimas Islam dan Haji Kemenag RI, 2003, p. 7).

The emergence of decisions in the form of fatwas issued from various regions related to the answers to legal and political issues that are developing with standardized methods and procedures that are guided by all Indonesian Ulema Councils and used by each in issuing fatwas.

The Indonesian Ulema Council (MUI) is a gathering of Muslim scholars, *zu'ama*, and scholars who have the responsibility to provide answers and show the right path to the problems faced by people

One of the peculiarities of the MUI in establishing fatwa is the need to know the opinions of experts in certain scientific fields as consideration in determining the fatwa. Before deciding on a fatwa, the MUI (in this case the Fatwa Commission or special team) carefully studies each issue submitted to the MUI at least a week before the trial. After conducting a comprehensive in-depth discussion, and taking into account the opinions and views that developed at the hearing, the commission adopted a fatwa. Every Fatwa Decree must be challenged after it has been signed by the Leadership Council in the form of a Fatwa Decree (SKF).

From the data search in the field, it was found that the MUI method in determining fatwas related to law that intersects with the needs of many people such as Friday prayers in addition to mosques is related to the requests of people who come to Jakarta from outside Jakarta in very large numbers, which fill public ways of holding demonstrations. In this case, MUI stipulates that Friday prayers performed are legal, but when worship can hamper the public interest it should not be performed.

Discussion

Atho Mudzhar, based on his review of the MUI fatwa between 1975 - 1988 or of the 22 fatwas issued by the MUI, Atho 'Mudzhar said that most

MUI fatwas are based on qiyas, because qiyas are indeed effective in solving new problems that do not yet have the text in al. -Qur'an and Hadith. there is a fatwa that directly refers to the hadith, without reviewing the verses of the Koran, there is also a fatwa that directly refers to the book of fiqh, without looking at other sources, and there is also a fatwa that does not provide any basis and argument, but directly mentions the fatwa dictum, as well as the ability to play the film *The Message* because it does not show the face of the Prophet Muhammad (Mudzhar, 1998, p. 134).

Even though many hadiths contain a prohibition to paint the face of the Prophet, but in this Fatwa Decree this hadith is not displayed. Fatwa regarding the halal status of rabbits is also not carried out according to the right basis and procedure, this SKF only displays the hadith in the book *Nail al-Authar*, without mentioning the generality of the verse.

In his view the application of qiyas is not right, such as the illat inequality between maqis fih and maqis alaih. Like the MUI decision regarding the ability to cultivate frogs that have been shrouded by tanning the skin. The inaccuracy is because the cultivation of frogs is to be eaten, while tanning is only for use. Yet according to Atho Mudzhar, frog cultivation or eating frog meat is more appropriate when it is betrayed by cultivating and eating crabs.

In establishing frog cultivation laws, the ultimate goal is to eat, it is necessary to decide first on the halal status of the frog. Eating frog meat is forbidden according to the Shafi'i school, but is allowed according to the Maliki school. In fact the MUI justifies the cultivation of frogs, but it is forbidden to eat them. Frog cultivation is permitted to benefit, but it still cannot be eaten. The problem is why the MUI does not immediately take the opinion of Imam Malik who allows to eat frog meat, which means it is also permissible to cultivate it, both for its benefits and for consumption. MUI in practice also bases on schools that are outside the mainstream schools in Indonesia when the MUI takes the opinion of Zahiri schools in determining the necessity of travelers to hold Friday prayers.

What the researchers found in establishing the Ulama Council's law emphasized the concept of Maqashid al-Sharia, by trying to realize benefits and eliminate mudharat, so that what was found by Atho 'Mudzhar was different from what the researchers found, that after the reform period, there was a shift in the use of legal methods which has more portions, namely with the concept of mashlahat not with qiyas. This is indicated by the many norms of Ushuliyah related to Maaslahat and Dhoruriyat. Namely the following rules: which in each fatwa these rules are always disclosed, even though it is not associated with a strong reason where dhoruratnya and where the benefits of a provision that is declared. The existence of the legal basis of Ijmak and Qiyas becomes difficult to apply because the problems that arise generally have not been found events such as in the past. This fact is indeed influenced by political issues that affect the provisions of the emergence of new conditions that require legal answers.

In the determination of the fatwa of the Indonesian Ulema Council which is related to the needs of many communities such as the fatwa related to the MR vaccine. in this case the MUI still stipulates that the vaccine is haram, but for the time when the issuance of the fatwa was permitted because of its dharurat nature. From this it seems clear that the opinion is based on a greater benefit for the community to avoid rubella which according to experts is very deadly, so the MUI also set it as something that is dhorury.

The response to the situation that is happening and requires answers and legal provisions for Muslims seems to be a consideration in several MUI fatwas that have been issued in several Provincial MUI, in West Java MUI many fatwas related to heretical sects that appear with the number of followers is not small, so the West Java Province MUI responded to issue a fatwa related to the existence of these streams. Likewise, in East Java, the issuance of a fatwa on the heresy of the Shiite group that appeared in Sampag Madura and Pasuruan. This fatwa decision is also related to a larger matter, to avoid the emergent mafsadat which is the discomfort of the people from the emergence of anarchist movements against the Shiite followers.

Related to the influence and political pressure on the fatwa issued by the Ulema Council does not have an impact on the decision making of the law even though it is implied as if compared to the implementation of vaccines in other Muslim countries such as Malaysia and Berunai.

CONCLUSION

The results of the decision The legal determination issued by the MUI generally stops after the stipulation of the fatwa and the existence of an agreement with the parties as the object of the fatwa, without proceeding to the execution and termination of deviant teaching activities. So many activities that change names and places while the teachings are still contrary to Islamic teachings. Thus, the MUI method in determining fatwas is moderate or *wasthiyyah* which is reflected in the various decisions issued.

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