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The Position of The National Sharia Council's Fatwas in The Legal System in Indonesia

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ABSTRACT

One of the functions and role of the Indonesian Ulema Council (MUI) in answering the problems of the ummah and the urgency of Qawa'id Fiqhiyyah in the implementation of fatwas. The method of this research is qualitative research. The results of this study show that: First, the process of establishing the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) on Islamic banking follows the guidelines or guidelines set by the MUI fatwa commission. Second, the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) uses qawaid al-Fiqhiyyah in consideration of its fatwa, especially related to fatwas related to shari'ah banking. Third, the process of legislation and the implementation of fatwas of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) which is binding for shari'ah banking institutions in the form of the process of implementing or pouring fatwas into bank indonesia regulations.

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INTRODUCTION

The sources of Islamic law are the Al-Qur'an and the Sunnah of the Prophet Muhammad SAW (Sufyan and Hartono, 2023). These two sources are also known as the basic postulates of Islamic law. In addition, the sources of Islamic law agreed upon by the ulema are Ijma' and Qiyas (Firdaus *et al*, 2020). Meanwhile, the sources of Islamic law that are not agreed upon by the Ulema are Istihsan, Mashlahah Murlahah, 'Urf, Istishhab, Syar'u Man Qablana, Friends of the Madzhab and Sadd al Dzari'ah. All of them are supporting arguments and tools to arrive at the laws in the Al-Qur'an and As-Sunnah. Some scholars call it the istinbath method. Imam al-Ghazali, for example, called Istismar the istinbath method.

As society advances and the problems faced become more complex, the ulama realize the need for collective ijtihad (jamâ'î) so that a problem can be viewed from various disciplines so as to produce a comprehensive answer (Nashirudin and Sa'adah, 2019). The diversity of Muslims in Indonesia is very much characterized by fiqh. Every religious issue is seen from the legal approach, whether haram or halal. Based on this, the government feels it is necessary to obtain the legitimacy of the ulama for the various policies. Therefore, Maulid and Amirsyah (2021), the presence of the Indonesian Ulema Council (MUI) can help the government in making the development programs that have been launched a success. As a follow-up by Kasdi (2018), MUI established a forum under its auspices which became known as the National Sharia Council (DSN).

The National Sharia Council issues fatwas on types of financial activities , such as sharia financial products and services (Zaini and Shuib, 2021). Since 1999 until 2001, fatwas grouped into three parts. First, fatwa groups for transaction activities carried out by sharia banking, both in raising funds, distributing funds (financing) and banking services. Second, the fatwa group for accounting activities in sharia banking. Third, the fatwa group for sharia investment. In this case the author highlights the DSN fatwa regarding transaction activities by sharia banking.

Based on the function and role of the Indonesian Ulema Council (MUI) in responding to the problems of the people and the urgency of Qawa'id Fiqhiyyah in implementing fatwas, where Qawa'id Fiqhiyyah is one of the foundations in determining the law on various issues, especially in the matter of Muamalat Maliyyah, especially products Sharia banking is currently developing very rapidly.

LITERATURE REVIEW

The MUI in making its fatwa decisions has a basis and rationale sciences (Hassan and Khairuldin, 2020). This is intended so that the resulting fatwa can be accounted for and is in accordance with Islamic teachings. Therefore, the basis for determining an MUI fatwa on a problem must be based on several things, including (Asrin and Nasution, 2022) :

- a. Every fatwa decision must be based on the Mu'tabarah Book of Allah (Quran) and the Sunnah of the Prophet, and not conflict with the public interest.
- b. If it is not contained in the Book of Allah and the Sunnah of the Prophet as specified above, then the fatwa decision must be taken without contradicting the Ijma', Qiyas the Mu'tabar and other legal postulates such as: Istihsan, Maslahah Murlah and Sadd azzari'ah.
- c. Before making a fatwa decision, it is recommended to study the opinions of previous school of thought imams, both in relation to legal arguments and in relation to the arguments used by parties with different opinions.
- d. The views of experts in the problem area for which a fatwa decision will be made must be taken into consideration.

RESEARCH METHOD

This type of research is a type of qualitative research. According to O'Kane *et al* (2019), data analysis is inductive/qualitative and the results of qualitative research emphasize meaning rather than generalization. So in qualitative research, the scientific level of a work can be seen from the level of research subjectivity in interpreting (reading) reality according to the scope that the researcher has determined with information. In qualitative research, the research instrument or tool is the researcher himself. The research method uses empirical juridical research methods based on Watkins (2017), namely analyzing the qawa'id fiqhiyyah in the fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) regarding sharia banking (Mu'adzah, 2022 and Jalili *et al*, 2023).

RESULT AND DISCUSSION

The role of the National Sharia Council (DSN)

The development of sharia financial institutions in Indonesia is marked by the active role of the Sharia Supervisory Board (DPS) in each financial institution. So it is necessary to establish an institution that will accommodate every problem faced by DPS practitioners,

each of whom has different problems. So it is feared that each DPS will provide different legal provisions, which will cause confusion for the public and customers. Therefore, the MUI, as the umbrella for every Islamic institution and organization in the country, considers it necessary to form a national sharia council with oversight of all financial institutions (Nafi'Hasbi and Widayanti, 2023). Where the sharia council will issue a fatwa of the same nature in dealing with problems in each DPS and of course applies to all sharia financial institutions.

In 1990, during a workshop, there was a lot of discussion regarding bank interest, development of the people's economy through the establishment of banking institutions whose operational systems were based on sharia principles (Arifin, 2021). At that time, Ulema and intellectuals also planned to establish a national-scale sharia council to provide regulations in the form of fatwas in accordance with sharia provisions. This also discussed at a workshop on sharia mutual funds in 1997. So, Jamaludin (2023) stated that at the workshop meeting it was mutually agreed on the formation of the National Sharia Council (DSN). This agreement was followed up officially in the preparation of the DSN organizational structure in 1998.

Structurally, DSN is an institution under the MUI. The formation of the DSN is intended to carry out the duties and authority of the MUI in order to provide solutions related to problems related to sharia economics, both related to the sharia banking operational system and other matters (Anshori and Nurlia, 2023). Directly, the MUI can coordinate among the ulama to carry out efforts effectively and efficiently in responding to every problem faced by the people by issuing a fatwa. Apart from that, DSN is expected to be able to proactively supervise, direct and apply the values and principles of Islamic teachings for sharia economic actors. Thus, DSN-MUI is the highest authority for determining a fatwa in determining sharia values in Indonesia.

DSN-MUI has the following duties:

- a. Establish fatwas on LKS, LBS and other LPS systems, activities, products and services.
- b. Supervise the implementation of fatwas through DPS at LKS, LBS and other LPS.
- c. Create Fatwa Implementation Guidelines to further explain certain fatwas so as not to cause multiple interpretations when implemented in LKS, LBS and other LPS.
- d. Issue Circular Letters (Ta'limat) to LKS, LBS and other LPS.
- e. Providing recommendations for prospective members and/or withdrawing recommendations for DPS members on LKS, LBS and other LPS.
- f. Providing Recommendations for ASPM Candidates and/or withdrawing ASPM Recommendations
- g. Issuing a Statement of Sharia Conformity or Sharia Harmony for products and provisions issued by the relevant Authority;
- h. Issue Sharia Conformity Statements for systems, activities, products and services at LKS, LBS and other LPS;
- i. Issue Sharia Conformity Certificates for LBS and other LPS that require them;
- j. Organizing a Sharia Expertise Certification Program for LKS, LBS and other LPS;
- k. Carrying out outreach and education in order to increase financial, business and sharia economic literacy; And
- l. Developing the application of sharia values in economic activities in general and finance in particular.

The Authority of the National Sharia Council (DSN)

Based on research conducted by the author, it was found that the authority of the National Sharia Council is:

- a. Provide warnings to LKS, LBS and other LPS to stop deviation from the fatwa issued by DSN-MUI;
- b. Recommend to the authorities to take action if warnings are not heeded;
- c. Freeze and/or cancel Sharia certificates for LKS, LBS and other LPS that commit violations;
- d. Approve or reject requests from LKS, LBS and other LPS regarding proposals to replace and/or dismiss DPS at the institution concerned;
- e. Recommend to related parties to develop businesses in the fields of finance, business and sharia economics; And
- f. Establish partnerships and cooperation with various parties, both domestic and foreign to develop businesses in the fields of finance, business and sharia economics.

DSN-MUI is an independent institution that issues fatwas as a reference relating to economic, financial and banking issues. The role of DSN-MUI is very important to improve sharia banking and maintain sharia banks' compliance with Islamic law. The number of DSN-MUI Fatwas as of October 2021 is 143, consisting of fatwas in the banking sector, NBFi sector, capital markets sector, business sector and general fatwas. DSN fatwas will continue to increase along with the development of sharia economic transactions.

The Position of the Fatwa of National Sharia Council (DSN) in the Legal System in Indonesia

DSN-MUI has an important role in maintaining LKS compliance with Sharia principles. Law Number 21 of 2008 emphasizes that every business activity must not conflict with sharia, which is referred to in the fatwa that has been issued by the DSN-MUI and has been converted into PBI. Thus, fatwas that have been referred to and made into Bank Indonesia Regulations (PBI) are binding on every LKS or binding on the public, while fatwas that have not been stated in PBI cannot yet be said to be binding. However, if we refer to Bank Indonesia Regulation No.11/15/PBI/2009 which provides the understanding that sharia principles are the principles of Islamic law in banking activities based on fatwas issued by the National Sharia Council-Indonesian Ulama Council, then the principles of sharia by law are in effect. as positive law even if it has not been or is not stated in Bank Indonesia Regulations.

The National Sharia Council issues fatwas on types of financial activities as well as sharia financial products and services. Since it was first established in 1999 until 2001, in general these fatwas were grouped into three parts, first, fatwa groups for transaction activities carried out by sharia banking, both in raising funds, distributing funds (financing) and banking services. Second, the fatwa group for accounting activities in sharia banking. Third, the fatwa group for sharia investment.

The main basis that is the benchmark for DSN-MUI in giving fatwa is the basic rule in muamalah, namely "al-aṣl fī al-mu'āmalah al-ibāḥah (the original law in Muamalah is permissible)", this rule is related to the law of everything that is kept quiet, namely not There are arguments that allow it or forbid it. In this rule, even though it is stated absolutely, the real meaning is to be taqyīd with everything that is not harmful. Because something is proven to be a real danger, the original law is not permissible even if there is

no written argument about it.

The rule that applies continuously in the Shari'a is that something which is permitted by the Shari'a does not harm anything and muamalah which is beneficial is not haram. This law does not change except with postulates. Based on this rule, contracts and tasharruf (transactions) are permitted in which there is no text that clearly indicates whether it is permissible or haram, and there are no doubts about usury and harm.

In DSN-MUI sharia economic fatwas, these rules are always included as the legal basis for making fatwas, meaning that in this case these rules consistently influence each DSN-MUI fatwa ijihad pattern even though the methods used are different. For example, in Hawalah's fatwa which uses the basis of Abu Hurairah's hadith narrated by Bukhari "Delaying the payment of a debt by someone who can afford it is injustice. So, if one of you transfers the right to collect his receivables (is ḥawalahkan) to someone who can afford it, accept it", DSN-MUI also uses these basic principles.

Likewise, in the fatwa regarding down payments in murābahah which uses the basic rule "al-ḍararu yuzālu" the use of the above rule is also included. Likewise, in the fatwa on insurance which uses maslaḥah murlah analysis, DSN-MUI still includes this rule as one of the basic legal considerations. Based on this, it can be seen that the DSN-MUI iftā' practice has never abandoned the use of the principle "al-aṣl fī al-mu'āmalah al-ibāḥah" as explained above.

CONCLUSION

DSN-MUI has the role in maintaining LKS compliance with Sharia principles. Law Number 21 of 2008 emphasizes that every business activity must not conflict with sharia, which referred to in the fatwa that has issued by the DSN-MUI and has converted into PBI. Thus, fatwas that have been referred to and made into Bank Indonesia Regulations (PBI) are binding on every LKS or binding on the public, while fatwas that have not been stated in PBI cannot yet be said to be binding.

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