

The Possibility of the Fatwa of the National Sharia Shoe (DSN) Majelis Ulama Indonesia (MUI) as The Law Meteriil Economic Law

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Abstract: *Fatwa is part of the doctrine of Islamic legal scholars. The Fatwa of the National Sharia Council of the Indonesian Ulema Council in response to issues related to the economic and banking syanriah proposed by Bank Indonesia and the Shariah economic actors. The problem is whether the fatawa of Dawan Syariah Nasional MUI is made a Shariah economic law law by a judge in the context of Sharia banking / banking? Research is normative research with approach of law and concept approach.*

Shariah Syariah Products and Sharia (Islamic) Sharia (Islamic) Shariah Boarding Board's fatwa is the foundation of Sharia Banking and Economy, by Bank Indonesia of Shari'ah Council MUI Board in the management of Shariah bank implementation, and the schedule judge in the definition of DHCP Shariah economic case.

Keywords: *Fatwa, Sharia Council, Majelis Ulama, material law, Sharia economy.*

I. Background

The formation of national law comes from European law, customary law, Islamic law and international law. The four sources of law are always used as a reference in the formation of material law and formal law. Islamic law as one of the sources of national law occupies a very significant position both with regard to material and Islamic legal values. There have been various religious issues in the past that have never been known that require a solution or an answer. The Indonesian Ulema Council (MUI) with its Fatwah institution is competent to explain the religious issue.

The National Sharia Board as part of the MUI Fatwa Institution always contributes to fatwas in direct contact with Shariah bank products and non-financial Shariah Institutions, even by Bank Indonesia as a legislator in the operationalization of Sharia economic products. However, the fatwa of its validity is not binding, because the fatwa on the one hand is the product of thinking of a group of people or individuals who have the competence of religious knowledge, especially the science of Islamic law. On the other hand the fatwa is not included in the hierarchy of Indonesian legislation. But in reality ahsil-the result of fatwa lemabga of the National Sharia Council by the actors of the banks of Shariah and non Islamic financial institutions used as referrals in oprasional.

From postulatpemikaran need a study about the position of Fatwa of National Sharia Board of MUI as Meteriil Law of Sharia Economics. Meode used is normative method with approach of law and concept approach.

II. The Fatwa position in Islamic Law

Term fatwa is a term that is commonly known in Islamic law. The fatwa comes from Arabic. According to al-Fayumi, (ال ف توى) comes from the word "al-fata" (ال ف تى) meaning "Strong youth"(Al Fayumi, 1965:2). The person who is called the mufti fate. Mufti is the person who conveys a legal explanation or submits a fatwa in the midst of society (Mardani, 2013:3743-374). With other editors mufti is a faqih who has a compiler to issue opinions or answers to Islamic problems that did not exist before. This meaning implies that a mufti must strongly argue from the person who asked for a fatwa. Mufti by Wahbahaz-Zuhail called mujtahid fatwa (Wahbahaz-Zuhail, 2010:367) is a group that has the ability to understand and explain the problems and establish the legal basis .

Fatwa (Arabic: ف توى, fatwā) is a term of opinion or an interpretation on a matter relating to Islamic law. Fatwa itself in Arabic means "advice", "advice", "answer" or "opinion". The definition is an official decision or advice taken by an authorized institution or individual, delivered by a mufti, in response to a question posed by a fatwa (mustafti) requester who has no attachment. Therefore, the fatwa's requester does not have to follow the contents or the fatwa law given to him (https://id.wikipedia.org/wiki/Fatwa.._5-4-2017).

Fatwa is meaningfully shari'a, the explanation of Shari'a law on a problem of existing problems, supported by the argument derived from Alqur'an, Sunnah Nabawiyah, and ijtihad. Mardani raised a view of the book *Mafaahim al-Islamiyah*, Juz 1 page 240, said that is a very urgent matter for humans, because not everyone is

able to explore the laws of Shari'a. Their jiks are required to possess that kenguan, that is, to reach the level of the ability of berijtihad, undoubtedly the work will be neglected and, the wheel of life will be stopped (Mardani, 2013:374).

From the views that dikemukakan, can know the nature and the characteristics berfatwa as follows:

1. It is an attempt to explain
2. The explanation given is about syara 'law which is obtained through the result of ijthad
3. The explanation is the person skilled in the field described
4. The explanation was given to the person who asked who did not know the law (Amir Syarifuddi, 2009:429).

Indonesia with the majority Muslim population and faced with new problems that were not obtained previously due to the influence of science and technology requires an explanation.

The Indonesian Ulema Council (MUI) as an institution of infra-structure outside the State institution is obliged to explain every religious issue demanded by both the Muslim community and the government.

The fatwa has a very important position in Islamic law, so the fatwa in the opinion of the ulama is an optional "ikhtiyariah" (option that is not legally binding, although morally binding to mustafti (the party who asks for fatwas), while for other than mustafi is "i 'lâniyah' or informative which is more than just a discourse. They are open to take the same fatwa or ask a fatwa on the mufti / another expert.

As for its position in the Islamic legal system is the current fatwa is the result of collective ijthâd. However, it can not necessarily be equated with ijma ', because the scholars who play a role in collective ijthâd do not encompass all the scholars who are the requirements for a ijmâ', since the activity of ijthâdjama'i (collective ijthâd) is possible to be performed several times by different actors at different times and places so that the findings of the law are possible there is a difference between one activity ijthâdjama'i (collective ijthâd) with others, albeit to the same problems. On the other hand, ijmâ 'does not give an opportunity to dissent because all scholars have agreed, so the fatwa is not an ijmâ', and it is possible for the community to accept.

III. Position of MUI Fatwa in National Law

MUI is a forum for deliberation of scholars, zu'ama and Muslim scholars as well as being a pangayom for all Indonesian Muslims. MUI as the most competent institution for solving and answering the problem of every religious problem that always arise and faced by society and has got full trust, both from society and government (Tim Penyusun, 2011:935).

The solution or answer to religious issues that are not now found in the past is the power of religious argumentation that can cool the Muslim community. This can only be done by persons or institutions that have broad religious knowledge competencies.

MUI as a religious institution and the presentment of Indonesian muslim community has that competence, because in it are collected scholars, zu'ama and Muslim scholars who have the Islamic religious scholarship compilation and other scholarship. Thus the MUI as mufti (Giver Fatwa) has the competence to give fatwa, especially issues related to Islamic law, whether requested or not requested. As an institution giving the fatwa MUI accommodate and channel the aspirations of both Muslims of Indonesia is very diverse flow and understanding and thoughts and religious organizations and the government of Indonesia in the issue of legislation.

IV. Fatwa National Sharia Council (DSN) MUI

Law Number 12 Year 2011 Concerning the Establishment of Laws and Regulations Article 7 regulates the Type and hierarchy of Laws and Regulations, and in Article 8 paragraph (1) regulates the Type of Legislation other than as intended in Article 7 paragraph (1) by the People's Consultative Assembly, the People's Legislative Assembly, the Regional Representative Council, the Supreme Court, the Constitutional Court, the Supreme Audit Board, the Judicial Commission, Bank Indonesia, the Minister, the same body or institution or commission established by law or Government on the law, Provincial People's Representative Council, Governor, Regency / Municipal House of Representatives, Regent / Mayor, Village Head or equivalent. Furthermore, in paragraph (2) of the Laws and Regulations as meant in paragraph (1), it is recognized and has a binding legal force as long as it is ordered by a higher Legal Regulation or set up under the authority.

Both Law Number 12 Year 2011 on the Establishment of Laws and Regulations, as mentioned in Article 7 of Law Number 10 Year 2004 on Legislation Regulation, does not mention fatwas as part of the legal basis in this country, so that fatwas can not be used as a legal basis.

BI as an institution of state financial institution is authorized to make specific regulation about certain bank products which serve as implementation guidance. Sharia banks as one of the national banking institutions under BI apply Islamic principles. Of course, the necessary source of sharia economic material, and who understand the principles of sharia is only those who have the ability of Islamic scholarship. DSN MUI as one of the sub-

section of MUI fatwa institution is competent to solve the problems of sharia economy which in the past did not exist, and not even found the argument in Alqur'an and Sunnah Rasulullah saw.

From the approach of the formal legal source of the position of fatwa in the positive legal system of Indonesia is the doctrine if based on the opinion of M. Mahfud MD, in certain circumstances is the custom if the fatwa becomes the legal value of living in society. But not included in the hierarchy of legislation. Based on the above, the fatwa is only the opinion, advice of non-binding clerics, and to be able to apply binding the fatwa must pass through the first regulation which then become the legislation, and / or can be used as legal basis by the judge in deciding the case in the court and the verdict have a permanent legal force (jurisprudence). (www.hukumonline.com., 5-4-2017)

The Fatwa of DSN MUI can become a sharia law material law and become a positive law if the fatwa becomes law regulation either in the form of Law, Peraturan Government, Presidential Regulation in the form of technical regulation that is PeraturanMahkamah Agung, BI regulation, Minister of Finance Regulation. According to Yeni Salma Barlinti in his dissertation conclusion entitled "The Status of Fatwa DSN in National Legal System", which has been maintained in the examination of Faculty of Law University of Indonesia (FHUI) doctoral program as quoted from article Fatwa DSN Is a Binding Positive Law, explained that in its development, some of the fatwa issued by DSN MUI is a binding positive law. Because, its existence is often legitimized through legislation by government agencies, so should be adhered to the economic actors of sharia(Yeni Salma Barlini, <http://www.hukumonline.com>. 5-4-2017). It is also possible if the MUI's DSN fatwa becomes a legal opinion (doctrine) in the process of dispute resolution of sharia economy or has become a living value in society which the judge makes as the basis of legal considerations.

As mandated in Law Number 48 Year 2009 on Judicial Power mentioned in Article 10 paragraph (1) the Court shall not refuse to examine, hear, and decide a case filed with the argument that the law is absent or less clear, compulsory obligation to examine and prosecute. Thus, in the case of a legal vacuum in a case, the judge is given the opportunity to explore the legal values contained in the views of jurists or legal values living in society. The Fatwa of DSN MUI is related to unregulated principles of sharia economy in the form of laws and regulations categorized as doctrine, or views of experts and / or legal values living in society, judges may be allowed to make as sharia law material law.

V. Conclusion

The Fatwa DSN MUI on sharia economic material which is regulated in the form of legislation meets leagility principle (legal certainty) and also DSN MUI fatwa about syariah sharia material which is not in the form of legislation but becomes the basis in consideration of judge's decision to fulfill legal certainty and binding.

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