

THE POSITION OF FATWA BY THE INDONESIAN ULAMA COUNCIL IN THE FIELD OF ISLAMIC BUSINESS IN INDONESIA

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ABSTRACT

Islamic business has significantly developed in Indonesia over the past few decades, driven by the high awareness among Muslims to apply Sharia in all aspects of life. Unfortunately, this desire is hindered by the inadequacy of regulations as the legal umbrella for the implementation of Islamic business activities in Indonesia. The existing regulations are mostly in the form of fatwas issued by the National Sharia Council (DSN) of the Indonesian Ulama Council, which do not have binding legal power. This type of research is normative juridical, and its nature is descriptive with a legislative and conceptual approach. The data sources for this research are secondary data sources. Qualitative analysis is used to analyze the data. Based on the research results, it was found that in the realm of ushul fiqh, a fatwa is a response to questions from individuals or institutions and is non-binding. Referring to the types and hierarchy as stated in Law Number 12 of 2011, the position of MUI fatwas does not constitute a type of legislation that has binding legal force. From the perspective of abstract regulations, a fatwa can only become binding if it takes a certain legal form issued by a competent authority, thus becoming positive law. The legal consequence of ignoring or defying the fatwa of the National Sharia Council of MUI by Sharia Financial Institutions is limited to administrative sanctions only.

Keywords: Business, Economy, Fatwa, Islam.

INTRODUCTION

One of the dynamics present in society is the growing awareness to implement the commands of Sharia in every aspect of the lives of Muslims in Indonesia. Until now, this awareness has been limited to ritual worship (ibadah mahdhah), but in recent decades, the economic aspect (muamalah) has begun to be implemented in the daily lives of Muslims in Indonesia. The debate regarding the existence of Islamic economics continues to attract attention. Some argue that Islamic economics is essentially the same as conventional economics, only with the addition of Islam. Others say that Islamic economics is not fundamentally different from other economic systems, minus the capitalist and socialist elements, with the addition of Islam. Another opinion is that Islamic economics adopts much from existing economic systems, highlighting the weaknesses of other systems to demonstrate that Islamic economics is substantively superior.(Toha Andiko, 2017). Since 1992, Sharia economics has been present in Indonesia and has shown increasingly strong existence and

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progressive growth from year to year. With the establishment of Bank Muamalat Indonesia¹ as the first Sharia bank in Indonesia, Sharia economic activities have expanded into other sectors such as insurance, capital markets, mutual funds, financing, pawnshops, and other business fields (Muhammad Fawzan Azhiima, 2020). The implementation of these Sharia economic activities is something new and different from the initial concepts outlined by classical Fiqh scholars.

The problem is that until now there has not been a single legal basis in the form of legislation to legalize all forms of Sharia economic business transactions. This means that there is a legal vacuum along with the emergence of new types of businesses that did not exist at the time when the Qur'an, as the revelation given to the Prophet Muhammad SAW, and the Sunnah were revealed, necessitating a response, especially from the scholars. This is a significant need for Muslims in facing issues that do not yet have established laws (Muhammad Fawzan Azhiima, 2020). The response from the scholars is then known as a fatwa. A fatwa is the result of the diligence of Muslim scholars in performing *ijtihad* to find the law for a particular issue. Additionally, Muslim scholars also play a role in unifying the actions and steps of Muslims in realizing the ideals of the nation and the state (Imaro Sidqi dan Doli Witro, 2020). The Indonesian Ulema Council (henceforth referred to as MUI) often issues fatwas in response to questions from the public or as a reaction to government policies. MUI fatwas are considered to represent the voice or views of Indonesian Muslims, as the personnel in MUI are representatives from various Islamic organizations in Indonesia. However, many MUI fatwas have also attracted criticism and controversy (Ahmad Badrut Tamam, 2021).

One of MUI's responses, particularly in the field of Islamic economics, was the establishment of the National Sharia Council (DSN). Based on the MUI Leadership Council Decree No. Kep-754/MUI/II/1999 on the Formation of the National Sharia Council (DSN), the National Sharia Council (Veithzal Rivai, 2007) is an institution formed by the Indonesian Ulema Council (MUI) and structurally falls under MUI (Acme Admira Arafah, 2017). Institutionally, the National Sharia Council itself is not yet explicitly regulated in legislation. According to Article 1, point 9 of Bank Indonesia Regulation No. 6/24/PBI/2004 concerning Commercial Banks Conducting Business Activities Based on Sharia Principles, it is stated that the National Sharia Council is a council formed by the Indonesian Ulema Council (MUI) that is tasked with and authorized to ensure the conformity of products, services, and banking business activities with Sharia principles. The main issue with the fatwas issued by the DSN-MUI is that they cannot be used as a legal basis at all because, in the national legal system and the hierarchy of laws and regulations, as mentioned in Law No. 12 of 2011 on the Formation of Legislation, fatwas are not included as a part of the legal basis in this country (Agus Waluyo, 2016). Various studies conducted by different parties show that there is a significant amount of defiance or disregard for DSN-MUI fatwas in various Sharia financial institutions. These financial institutions have not fully implemented DSN-MUI fatwas related to Sharia

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financial products and services. These findings indicate that DSN-MUI fatwas are often ignored by Sharia financial institutions.

METHOD

This research is descriptive in nature, and the type of research is normative legal research. It uses a statutory approach and a conceptual approach. The data sources in this study are secondary data, and qualitative data analysis is used to analyze the data in this research.

RESULTS and DISCUSSION

The Position of Fatwas in the Realm of Usul al-Fiqh

It is the way of Allah (sunnatullah) that every era presents its own challenges. This is where Islam demonstrates its strength. Islam is always able to adapt to all times and places. Allah SWT has endowed humans with diverse abilities, ranging from expertise in fiqh, hadith, social sciences, psychology, and various other fields of knowledge. In this diversity, humans complement each other with their strengths and weaknesses, engaging in mutual giving and receiving. This diversity also extends to human abilities in understanding the laws of Allah SWT. In such conditions and situations, people with various strengths and weaknesses rely on one another to solve their problems, turning to those who are more knowledgeable (Peter Mahmud Marzuki, 2008). Facing legal controversies in contemporary contexts actually underscores the need for scholars to engage earnestly in research and discussions to establish new legal rulings. This earnest effort is known in the science of usul al-fiqh as *ijtihad*. The term "*ijtihad*" derives from the root word "*jahada*," which means "to exert maximum effort to obtain something from various matters." The term indicates a challenging or extraordinary task. In essence, *ijtihad* means earnest effort or diligent work to achieve something (M. Erfan Riadi, 2010).

In Islamic legal terminology, "*ijtihad*" refers to exerting one's utmost effort (straining one's intellect) to deduce religious law (sharia) using one of the legal evidences of sharia and specific methodologies. Without these legal evidences and methodologies, such efforts would be mere personal opinion and certainly not classified as *ijtihad*. One result of *ijtihad* is in the form of a fatwa. The terminology of fatwa relates to the terms *al-ifta* or *al-futya* and the fatwa itself (Ahmad Hanafi, 1989). Firstly, a fatwa is an act where a mufti issues a legal ruling or explains Sharia law. Secondly, a fatwa is the legal name of the ruling issued (Ma'ruf Amin, 2008). In the first category, where a fatwa is an act of a mufti issuing a ruling, Jamaluddin al-Qasimi argued based on his research that a fatwa is an answer to a problem that poses difficulty in Sharia law (Ma'ruf Amin, 2008) In the second category, where fatwa is the legal name of the ruling issued, Taha Abdullah al-Dasuki explained that a fatwa clarifies a law issued by an absolute mujtahid or a mujtahid within a school of thought. A fatwa is an opinion of Islamic legal scholars on issues presented or arising that are deemed necessary for providing guidance to the parties seeking direction or for the benefit of the entire community (Yeni Salma Barlinti, 2010).

Based on the various definitions of fatwa mentioned above, there are two prominent characteristics of a fatwa. First, a fatwa is responsive, meaning it is a legal opinion issued only after a question arises, and generally, the event whose legal aspects are being questioned has

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already occurred or is real. Second, in terms of legal force, a fatwa as a legal opinion is not binding. In other words, individuals, institutions, or the broader community are not required to follow the content or law provided by the fatwa. This is because a mufti's fatwa in one place can differ from the fatwa of another mufti in the same place. If this fatwa is later adopted as a court decision, which often happens, then the fatwa gains binding legal force, especially if it is adopted as positive law in a particular region (Nur Hidayah, 2009). In several Islamic countries today, such as Egypt, Saudi Arabia, Syria, and Morocco, the mufti holds a significant position and is part of an official institution that handles various issues concerning the Muslim community (Abdul Azis Dahlan, 2000). The mufti in these countries is not bound to any particular school of thought (*mazhab*) but operates comprehensively, considering various opinions of the schools of thought, in accordance with the conditions and situations of the society (Abdul Azis Dahlan, 2000). However, the mufti is also bound by the legislation established by their respective countries (Abdul Azis Dahlan, 2000).

To become a mufti, scholars of Islamic jurisprudence (*ushul al-fiqh*) state the following criteria that must be met for their fatwas to be accountable:

1. Mature (baligh), of sound mind, and independent;
2. Just (adil);
3. Meet the qualifications of a mujtahid or possess scholarly capacity to issue fatwas.

In terms of authority, fatwas can be divided into those issued by authorities authorized by the government and those issued by entities not authorized by the government. Fatwas issued by authorities authorized by the government are official fatwas established by the state. Individuals granted authority are appointed by the government and tasked with the responsibility and authority to issue fatwas. In issuing fatwas, various methods are employed, where each scholar or Islamic organization empowered to issue fatwas may utilize different approaches. This article will present the fatwa methods used by two prominent scholars: Yusuf Qardhawi, a contemporary scholar known for his secular tendencies due to extensive engagement with Muslim communities in the West, and Wahbah al-Zuhayli, another contemporary scholar known for his Salafi leanings and extensive involvement with Muslim communities in the East. Based on the method described above, it explains that a fatwa holds no meaning if not supported by evidence. The essence of a fatwa lies in its evidence, mentioning the wisdom and rationale of the law, comparing the Islamic perspective with something outside Islam, providing an introduction when explaining something perceived as strange or unusual, indicating what is permissible as an alternative to what is prohibited, and linking one provision to another within Islamic law. A mufti does not refuse to answer non-urgent questions, such as those previously asked and discussed in the past.

Thus, the methods or approaches used sometimes refer to the literal meaning of the religious texts (*nash*), if indeed *nash* corresponds to the reality of the issue being studied. At times, a mufti also uses analogies from similar cases (*qiyas*), or evaluates the public interest (*maslahah*) using general principles extracted from the Quran and Sunnah, such as *istihsan*, *maslahah mursalah*, *urf*, *sad al-zari'ah*, and others. In the perspective of Islamic jurisprudence (*ilmu ushul fikih*), fatwas can change over time due to the following factors:

1. Change of place: Differences between rural and urban areas, varying climates (hot vs cold, rainy vs snowy), and populations where Muslims are the majority versus minority.

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2. Change of time: Refers to the evolution of human circumstances over time, rather than the shift from one specific year to another.
3. Change of conditions: Varied circumstances such as narrow versus spacious conditions, health versus illness, wartime versus peacetime.
4. Change of tradition: Evolving societal customs and continuous practices recognized broadly in speech and action (*urf amaly and qawly*) (Wahbah al-Zuhayli, 2001).
5. Change of knowledge: Evolution in both Sharia knowledge and non-Sharia knowledge.
6. Change of human needs: Modern times have seen shifts in needs once considered secondary (*hajiyyat*) but now seen as necessary (*daruriyyat*).
7. Change of human capabilities: Advancements through revolutions in technology, biology, space, atomic, electronic sciences, general knowledge, and communication.
8. Change of social, economic, and political conditions.
9. Change of opinions and thoughts: Sometimes, while the knowledge itself remains unchanged, the thinking of a mujtahid may evolve due to new research or other factors.
10. Calamities (*musibah*): Calamities can mitigate strictness on matters previously considered impermissible under certain conditions, particularly those involving major sins, though they should not be taken lightly.

Another contentious issue among scholars of Islamic jurisprudence is related to who can perform *ijtihad*, as *fatwa* is a part of the activities stemming from *ijtihad*, and also who can engage in *taqlid*. The criteria for a mujtahid are extensively discussed by scholars in *usul al-fiqh* literature, such as being of *baligh*, mature, independent, and others. Therefore, controversy around criteria will be focused on three main aspects:

1. The mujtahid being followed is alive: There is still controversy among scholars regarding this issue. According to Imam Shafi'i and followed by the majority of scholars, it is absolutely permissible to follow the *fatwa* of a deceased scholar, as these *fatwas* do not perish with the scholar's death. The second opinion states that it is not permissible to follow the opinion of a deceased scholar because there is a possibility that if the scholar were alive, they would change their *fatwa*, and the *fatwa* of a deceased scholar cannot be considered eternal.
2. The highest level of knowledge: To determine the level of knowledge of a mujtahid, one can look at the popularity of their knowledge, the frequency with which laypeople refer to them, and the recognition by trusted figures of their knowledge level (Forum Karya Ilmiah, 2004).
3. Moral integrity (*'adalah*) and good character: *'Adalah* is used to denote moderate behavior (taking a middle path) in carrying out tasks, neither excessive nor careless. (Forum Karya Ilmiah, 2004).

The second issue relates to who can follow a *fatwa* (*muqallid*). *Taqlid* has been a subject of debate among the general public. Following *taqlid* is considered an obligation due to the following reasons:

1. Based on the word of Allah SWT in the Quran, in Surah An-Nahl, verse 43.

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2. Rationally, *ijtihad* can only be performed by individuals who possess mature scholarly talents. (Faridatus Suhadak, 2013)

However, some scholars oppose *taqlid* for several reasons:

1. *Taqlid* involves following the opinion of others, so sometimes the *muqallid* may not know the correctness of the opinion being followed.
2. Rationally, if people are commanded to follow *taqlid*, it could turn out that the person being followed is wrong in determining the law or is lying in the fatwa issued (Faridatus Suhadak, 2013).

By allowing *taqlid*, it is akin to instructing to follow mistakes or lies. Despite the controversies among scholars regarding *taqlid*, in essence, Muslims in the current context can explore various sources of information related to legal issues they face to prevent following incorrect opinions (Forum Karya Ilmiah, 2004). This is because nowadays, media for accessing various legal issues can be done in various ways, both directly and indirectly.

The Legal Authority of Fatwa from the National Sharia Board of the Indonesian Ulema Council (MUI) in the Field of Islamic Business in Indonesia.

In general, Islamic law is the living law or the law that lives within society, neither *ius constitutum* not *ius constituendum*. Positive law is law formulated by state institutions, explicitly stating when it applies and when it ceases to apply. The living law is not formulated by the state; rather, it lives within the realm of thought and legal consciousness of society. Islamic law influences society and sometimes its influence surpasses positive law formulated by the state. This living law is dynamic, evolving along with societal development (Mumung Mulyati, 2019). In the historical record since its establishment, Majelis Ulama Indonesia (MUI) has issued numerous fatwas, advice, and recommendations as part of Islamic legal thought incorporated into various legislative regulations (*taqin*). The effectiveness of fatwas in regulating societal behavior or resolving issues depends greatly on the level of obedience of the community to Allah SWT and His Messenger, and the authority of the scholars (*as ulil amri*) issuing the fatwas. MUI fatwas are legal opinions produced by MUI, where the 'procedure' of issuing fatwas must have scholarly capacity in the field of Islamic law to address specific questions based on the Quran and the Sunnah Rasulullah SAW (Mumung Mulyati, 2019). The fatwas issued by MUI, specifically those by the National Sharia Board under MUI, color almost the majority of all Islamic business or economic activities in Indonesia. Legal debates in Indonesia revolve around whether legal rulings produced outside legislative regulations should be binding or not. The National Sharia Board (DSN) is an institution formed by the Indonesian Ulema Council (MUI) in 1998, established by the Decree of the Leadership Council of the Indonesian Ulema Council (MUI) Number Kep.754/II/1999, and functioned to promote the implementation of Islamic teachings in economic life. The DSN of the Indonesian Ulema Council (MUI) is tasked with issuing fatwas on Sharia-compliant financial products to align with Sharia values. The establishment of the DSN by the MUI is in line with the growth of Sharia financial institutions, emphasizing the importance of the Sharia Supervisory Board (DPS) in these institutions. The establishment of the DSN represents a coordinated effort by scholars to address economic or financial cases more effectively and efficiently (Rizky Lutfi Amalin, 2017).

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The National Sharia Board (DSN) is an institution established by MUI that structurally operates under MUI. DSN's task is to handle issues related to Sharia economics, whether concerning Sharia financial institutions or other related activities (M. Cholil Nafis, 2011). To fulfill its main tasks, DSN has the authority to:

1. Issue fatwas that bind the Sharia Supervisory Board in each Sharia Financial Institution and serve as the legal basis for actions of the parties involved.
2. Issue fatwas that serve as the basis for regulations issued by authorized institutions, such as the Ministry of Finance and Bank Indonesia.
3. Support or withdraw support for candidates nominated to serve on the Sharia Supervisory Board of a Sharia Financial Institution.
4. Invite experts to explain issues necessary for discussions on Sharia economics, including monetary authorities/financial institutions domestically and internationally.
5. Recommend Sharia Financial Institutions to cease deviations from fatwas issued by the National Sharia Board.
6. Propose actions by authorized institutions if directives are not followed (M. Cholil Nafis, 2011).

In practice, especially in Islamic courts, fatwas are included in expert opinions. Fatwas represent opinions on Islamic law regarding a particular issue that can serve as a legal source for judges to consider in resolving cases. The use of fatwas as a legal source is justified because:

1. The content of the fatwa is based on Islamic Sharia, using principles of *usul al-fiqh* (jurisprudential methodology) to determine legal rulings.
2. The fatwa is issued by a qualified mufti, ensuring that the opinions presented can be accounted for responsibly, thus maintaining a positive image and credibility for the fatwa issued.
3. The content of the fatwa addresses matters that are not yet regulated by binding law. If the fatwa's content contradicts binding legislation, it should be contextualized against the values it contains, while considering the sense of justice in its application to the case (Yeni Salma Barlinti, 2010).

Referring to Law Number 12 of 2011, the position of the DSN-MUI fatwa is not a type of legislation that has legally binding force. From a constitutional and legal standpoint, MUI fatwas are essentially non-binding and serve as legal opinions that may or may not be followed. Therefore, fatwas are implemented as a form of personal religious consciousness, not a legal obligation. This means that MUI fatwas are not state laws with sovereign authority that can be enforced. From the perspective of abstract regulations, fatwas can be considered binding when they take the form of law, thereby becoming positive law. Fatwas are not provisions or binding laws applied to parties engaged in Shariah economic activities. Therefore, DSN fatwas are expected to serve as guidelines for conducting Shariah economic activities due to the absence of detailed provisions regulating Shariah economic activities. As a legal opinion or legal reasoning, a fatwa functions to explain a law or regulation. Therefore, does the nature of the fatwa have binding force for the parties seeking the fatwa, the issuer of the fatwa, or the general public? In theory, in its classical definition, a fatwa is considered optional ("*ikhtiyariah*"), which means it is not legally binding but morally binding for the *mustafti* (the person seeking the fatwa). For others, it is "*i'lamiyah*" or informative, more than

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just discourse. The binding nature of the DSN-MUI fatwa itself does not directly bind stakeholders, but it becomes binding if the legal opinions formulated in the DSN-MUI fatwa are incorporated into Bank Indonesia Regulations (PBI) (Ahyar A. Gayo, et.al, 2011).

Regarding DSN-MUI as the issuing authority of fatwas, viewed from the organizational nature, MUI is an institution that accommodates prominent scholars and intellectuals of Islam in Indonesia. It comprises scholars from various backgrounds, including traditionalists and modernists, tasked with providing guidance to Muslims in religious and societal life that is pleasing to Allah SWT. MUI advises and issues fatwas on religious and social issues to the government and the public. Considering the composition of its members and their responsibilities, MUI is authorized to issue fatwas. This is evidenced by the fact that since its establishment, MUI has issued numerous fatwas covering religious rituals, marriage, culture, politics, science, and economic transactions. As it evolved, MUI saw the need to establish the National Sharia Board (DSN) as the authoritative body for issuing fatwas on Sharia economics in Indonesia, positioned under the Indonesian Ulema Council (MUI). The plenary members of DSN consist of Sharia experts and economists/financial experts with Sharia insights. In deliberating on issues for which fatwas are issued, the National Sharia Board (DSN) also involves partner institutions such as the Indonesian Institute of Accountants and Bank Indonesia. Fatwa, as a legal opinion or ruling that serves to explain a law or regulation, raises questions about its binding nature on the fatwa seeker, the issuer, and the wider community. In classical theory, a fatwa is considered optional (*ikhtiyariyyah*), meaning it is not legally binding but morally binding for the *mustafti* (the one seeking the fatwa), while for others it is informative (*i'lamiyyah*) and more than mere discourse. However, when observing the practice of Sharia banking activities in Indonesia, the classical theory that a fatwa only binds the *mustafti* is not relevant to DSN-MUI fatwas. The Sharia economic fatwas issued by DSN-MUI today are not only binding for practitioners of Sharia financial institutions but also for the Indonesian Muslim community at large. The binding nature of DSN-MUI fatwas themselves does not automatically bind stakeholders directly, but they become binding when the legal opinions formulated in these fatwas are incorporated into the regulations of Bank Indonesia (PBI).

From a constitutional and legal perspective, MUI fatwas are fundamentally non-binding and cannot be enforced through law enforcement agencies. Nevertheless, fatwas are merely legal opinions that can be followed or disregarded. Similarly, in terms of abstract regulations, fatwas only become binding when they are incorporated into specific laws by competent institutions, thus becoming positive law. Implementing fatwas is a matter of personal religious conscience, not a legal obligation. This means that MUI fatwas are not national laws with sovereign authority that can be enforced upon the entire population. Essentially, the legality of MUI fatwas cannot and should not compel universal compliance among all Muslims. MUI fatwas are not state laws with sovereign authority that can be enforced upon the entire population. MUI fatwas also do not carry sanctions and do not have to be obeyed by all citizens. As a social and political force within the infrastructure of the state, MUI fatwas are only binding and obeyed by the Muslim community. The legality of MUI fatwas cannot and should not compel universal compliance among all Muslims. From a constitutional and legal perspective, MUI fatwas are non-binding and cannot be enforced through law enforcement agencies (Ahmad Badrut Tamam, 2021). In historical records, since

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the establishment of the DSN-MUI until now, many fatwas and advice from the DSN-MUI as products of Islamic legal thought have been absorbed into various laws and regulations, especially in the field of Sharia economics. Indicators supporting this trend can be seen from the birth of several laws and regulations, including:

1. Law No. 10 of 1998 concerning Amendments to Law No. 7 of 1992 on Banking;
Law No. 10 of 1998 marks the initial recognition of Sharia banking explicitly in the legislation. In Law No. 10 of 1998, the term "Sharia Principles" is explicitly mentioned in Article 1 (3, 4, 12, 13, 18), Article 6 (M), Article 7 (c), Article 8 (1 and 2), Article 11 (1 and 3).
2. Law No. 21 of 2008 concerning Sharia Banking;
Article 26 of Law No. 21 of 2008 states:
 - a. The business activities as referred to in Articles 19, 20, and 21 and/or Sharia products and services must comply with Sharia Principles.
 - b. The Sharia Principles referred to in paragraph (1) are fatwaed by the Indonesian Ulema Council.
 - c. The fatwa referred to in paragraph (2) is incorporated into the Bank Indonesia Regulation.
 - d. For the preparation of the Bank Indonesia Regulation as referred to in paragraph (3), Bank Indonesia establishes a Sharia banking committee.

Further provisions regarding the procedures for the establishment, membership, and duties of the Sharia banking committee as referred to in paragraph 4 are regulated by a Bank Indonesia Regulation.

3. KMA/032/SK/IV/2006 concerning the Implementation of Book II on the Guidelines for the Execution of Duties and Administration of Courts;
In this KMA, it is stated in Part II Judicial Technicalities, under the subsection on the position and authority of the Religious Courts/Mahkamah Syar'iyah, that there is a discussion of the material law used by the Religious Courts/Mahkamah Syar'iyah. In section 19, the DSN-MUI Fatwa is listed as material law used by the Religious Courts/Mahkamah Syar'iyah.
4. Supreme Court Regulation Number 02 of 2008 on the Compilation of Sharia Economic Law (KHES);
Many DSN-MUI fatwas have been absorbed into KHES, which is one of the material laws in the Religious Courts. The absorption of DSN-MUI includes:
 - a. The salam sale and purchase fatwa absorbed into Book II on contracts, Chapter V on types of sale and purchase, Section Three on cash payment sale and purchase, but deferred delivery (Bai' salam) in Articles 100 to 103.
 - b. The Bai' Al-Istishna' fatwa absorbed into Book II on contracts, Chapter V on the effects of Bai', Section Three on Bai' Al-Istishna', in Articles 104 to 10852. These articles derive their substance from DSN-MUI fatwa No: 06/DSN-MUI/IV/2000 on istishna' sale and purchase, which establishes legal stipulations including provisions on payment, goods, and other requirements.
 - c. The murabahah fatwa absorbed into Book II on contracts, Chapter V, Section Six on Bai' Murabahah in Articles 116-124.

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CONCLUSION

Based on the discussion and research results above, the conclusions are as follows: The status of fatwas in the context of ushul fiqh has two aspects. First, a fatwa is responsive in nature, meaning it is a legal opinion issued only after a question arises, and generally, the events in question have already occurred or are clear. Second, in terms of legal force, a fatwa as a legal opinion is not binding. Referring to the types and hierarchy outlined in Law Number 12 of 2011, the status of MUI fatwas is not considered a type of regulation with binding legal force. From an abstract regulatory perspective, a fatwa can only become binding when it takes a specific legal form issued by a competent authority, thus becoming positive law. Implementing a fatwa is an expression of personal religious consciousness, not a legal obligation. This means that MUI fatwas are not state laws that have sovereign power enforceable upon all citizens. Based on the discussion above, the author offers the following suggestions: There should be maximum efforts to promptly formalize DSN-MUI fatwas into law to strengthen the legal standing of Islamic business practices in Indonesia. Islamic financial institutions and the Financial Services Authority should make every effort to implement DSN-MUI fatwas as a form of compliance by Islamic banks.

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