



## **LEGAL POLITICS OF THE DSN-MUI FATWA IN THE SYARIAH BANKING INDUSTRY IN INDONESIA LEGAL SECURITY PERSPECTIVE**

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**Abstract:** Islamic law as a legal order that is guided and obeyed by the majority of Indonesian society, as Islamic law has lived in society and is part of Islamic teachings and beliefs, as Islamic law exists in the life of national law, and is a material in its guidance and development. Existence Islamic law in national law can be seen from the way it resolves problems, apart from that the existence of Islamic law can be seen by the ratification of the Compilation of Islamic Law (hereinafter referred to as KHI) as a product of Indonesian positive law, as it contains the provisions of Islamic Law which serve as guidelines for resolving problems for Muslims. The existence of Islamic judicial institutions and other Islamic institutions in Indonesia is a form of recognition by the Indonesian State of Islamic Law as part of the positive law of the Indonesian State. Law is an order of human actions. "Order" is a system of rules. Law is not, as is usually said, only limited to regulations. Law is a set of regulations that contain a kind of unity that is understood through a system. It is impossible to grasp the essence of law if we limit our attention to a separate regulation. The essence of law can only be fully understood based on a clear understanding of the relationships that form the legal order. Formulation of the Problem, How is the Regulation, Influence and Position of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and its Fatwa in the Activities of the Sharia Banking Industry in Indonesia. How is the Legal Politics of the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and its Influence on Regulations and Operational Guidelines for the Sharia Banking Industry. What is the Ideal Concept of the National Sharia Council of the Indonesian Ulema Council

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(DSN-MUI) and its Fatwa in the National Legal System Based on Pancasila.

**Keywords:** DSN-MUI Fatwa, Legal Politics, Legal Certainty

## **Introduction**

Indonesia is a legal state that recognizes the existence of God. Recognition of the belief in the Almighty God can be seen from the contents of the first principle of Pancasila which is the philosophy of the State of Indonesia, the contents of which are "Belief in the One and Only God", or recognizing one God, this is of course in line with the religions in Indonesia, especially Islam. which in its teachings monotheifies Allah SWT, meaning there is no conflict between Pancasila and Islam itself. The contents of the first principle in Pancasila illustrate that Indonesian society is a religious society. According to Mardani, a person's belief in religion is an absolute element in nation building and national character. The world's legal system recognizes at least five living and developing legal systems, namely the common law system, civil law, customary law system, Islamic law system and communist legal system. The Indonesian state adheres to three existing and developing systems, the three legal systems are:

Western Law/Civil Law, Western law was introduced to Indonesia at the same time as the arrival of the Dutch. The products issued in Dutch law are the Criminal Code and the Civil Code which are currently still in use. Customary Law in Indonesia cannot be determined exactly when it will come into effect, but when compared with other developed legal systems, customary law is the oldest law that has developed. Islamic law is a law that is also developing in Indonesia, where this can be seen from the role of Islamic law in resolving existing cases. Formally, Indonesia adheres to a civil law system, although in its current development it also adheres to a common law legal system, but because the majority of Indonesian people are Muslim, in the end the demand for Islamic law becomes a factual issue in state life.

Islamic law is a legal order that is guided and obeyed by the majority of Indonesian society, as Islamic law has lived in society and is part of Islamic teachings and beliefs, as Islamic law exists in national legal life, and is a material in its guidance and development. Islamic law is an important factor in determining every political consideration for making state administration policies.



The position of Islamic law in the legal history of the Dutch East Indies is divided into 2 periods, namely: The period of full acceptance of Islamic law. The period of full acceptance of Islamic law is called the theory of reception in complexu, namely a period where Islamic law is fully applied to Muslims. Since the existence of Islamic kingdoms in Indonesia, the colonial government enforced Islamic law for Muslims, especially marriage law, inheritance law which was then called family law. To guarantee the implementation of this law, the Dutch issued the Resolutie der Indische Regeering regulation on 25 May 1760, which became known as the Compendium Freijer. In the Regeerings Reglement (RR) of 1885, Article 75 states that: Indonesian judges must enforce the Religious Law (Godsdienstige Wetten).

The period of acceptance of Islamic law by customary law. The period of acceptance of Islamic law by customary law is called receptie theory, namely it is understood that Islamic law only applies if desired or accepted by customary law. Through Indische Statsregeling (IS) which was promulgated in stlb. 1929: 212, it was stated that Islamic law was removed from the legal system of the Dutch East Indies. Article 134 paragraph (2) of IS 1429 reads: In the event of a civil case between fellow Muslims, it will be resolved by an Islamic religious judge if their customary law requires it and as far as this is not determined otherwise by an ordinance. The existence of Islamic Law in national law can be seen from the way it resolves problems, apart from that the existence of Islamic law can be seen by the ratification of the Compilation of Islamic Law (hereinafter referred to as KHI) as a product of Indonesian positive law, as it contains the provisions of Islamic Law which serve as guidelines in resolving problems for Muslims. The existence of Islamic judicial institutions and other Islamic institutions in Indonesia is a form of recognition by the Indonesian State of Islamic Law as part of the positive law of the Indonesian State.

The Islamic justice institution has developed and functions as an institution that resolves the problems of Muslims in Indonesia's positive legal order, namely the Islamic Religious Courts institution. The first step after Indonesia's independence that the government took was to hand over the guidance of the Religious Courts from the Ministry of Justice to the Ministry of Religion through Government Regulation No. 05/SD/1946, as in 1948 Law No. 19 of 1948 concerning the Composition and Powers of Judicial Bodies was issued. the validity period of which will be determined by the Minister of Justice. This law includes the Religious Courts into the General Courts.

Islam has demonstrated its existence, as Islam is able to adapt to all times and places. Allah shows his power through the diverse abilities possessed by humans, namely the abilities of humans who are experts in



the fields of fiqh, hadith, social sciences, psychology and other scientific fields. This diversity allows humans to complement each other with their respective strengths and weaknesses, as humans receive and give to each other. This diversity also gives humans the ability to understand the law and obey Allah SWT. This ability shows that humans need each other to solve problems with more experts. At the peak point, a response from the ulama is considered very important in finding solutions or solutions to controversial problems that occur, especially those related to Islamic religious affairs. The problem has no clear basis in the Al-Qur'an or in the Sunnah of the Prophet, so this condition requires scholars to find arguments that are in line with Islamic law to create solutions for the benefit of the Muslim community.

Based on the above, it becomes the basis for Muslim intellectuals in Indonesia who are collectively increasingly motivated and have the desire to unite the movements and steps of Muslims in realizing common ideals in the context of the sovereign Unitary State of the Republic of Indonesia. These Muslim intellectuals formed a large institution with the authority to provide responses or determine attitudes towards controversial issues. This large institution is known as the Indonesian Ulema Council (MUI), as the attitude or response to actual problems issued by the MUI is called a Fatwa. The Indonesian Ulema Council (MUI) was founded on 07 Rajab 1395 AH, coinciding with 26 July 1975 AD in Jakarta. The meaning of Fatwa according to Sharia' is explaining Sharia law in a matter as an answer to a question, whether the identity of the person asking is clear or not, whether individual or collective. A fatwa is not a legal decision that is made easily, or what is usually called making a law without basis.

The fatwa issued by the MUI is in accordance with its authority, in this case the MUI has authority and territory, namely the MUI has the authority to issue fatwas regarding religious issues in general, especially legal issues (fiqh) and aqidah issues concerning the truth and purity of the faith of Indonesian Muslims. The MUI has the authority to issue fatwas regarding religious issues such as number 1 which concerns Indonesian Muslims nationally or religious issues in one area that can spread to other areas.

There is a problem that there is an MUI Fatwa, the Regional Indonesian Ulema Council only has the right to implement it. If due to certain factors the MUI fatwa as referred to in number 3 cannot be implemented, the Regional MUI may determine a different fatwa after consulting with the Central MUI. If there is no MUI fatwa yet, the Regional MUI has the authority to issue a fatwa. Especially regarding very difficult and sensitive issues, before determining a fatwa, the Regional MUI is expected to first consult with the Central MUI. Based on the formal sources



of law that apply in the national legal system, there are five sources of law, the sources of law are statutory regulations, customs, judge's decisions (jurisprudence), treaties, and doctrine (expert opinions/legal experts).

The sequence of laws and regulations applicable in Indonesia is regulated in Law of the Republic of Indonesia Number 12 of 2011 which has been amended several times, most recently by Law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning The formation of Legislative Regulations, which in a hierarchical manner are explicitly regulated in Article 7 of the Law of the Republic of Indonesia Number 12 of 2011 concerning the Formation of Legislative Regulations which states as follows:

- 1) The types and hierarchy of Legislative Regulations consist of:
- 2) The 1945 Constitution of the Republic of Indonesia;
- 3) Decree of the People's Consultative Assembly;
- 4) Law/Government Regulation in Lieu of Law;
- 5) Government regulations;
- 6) Presidential decree;
- 7) Provincial Regional Regulations; And
- 8) Regency/City Regional Regulations.

The legal force of Legislative Regulations is in accordance with the hierarchy as intended in paragraph (1) of Article

Law Number 12 of 2011 concerning the Formation of Legislative Regulations, as in Article 1 Number 2 of Law Number 12 of 2011 concerning the Formation of Legislative Regulations states that statutory regulations are written regulations that contain generally binding legal norms and is formed or determined by a state institution or authorized official through procedures stipulated in statutory regulations, so that if viewed from the position of the MUI which is not a state institution or authorized official, it is natural that Law Number 12 of 2011 concerning the Establishment of Regulations The legislation does not state that fatwas are part of the laws and regulations in this country, or as other legal regulations as regulated in Article 8 paragraph (1) of the Law in question, this shows that fatwas cannot be used as a legal basis. . Fatwa is only an opinion or advice conveyed by Islamic legal experts who are members of an Islamic organization, such as MUI, Muhammadiyah, NU, Persis, and other institutions.

Fatwa has unique characteristics. These characteristics show that fatwas are legal products that have different legal positions and powers between one Muslim country and another Muslim country. This difference is influenced by the legal, government and constitutional systems adopted by a country. There are countries that place fatwas or fatwa-making



institutions within the legal system and government structure, while there are those that place them outside the legal system and government structure. This has implications for the position and legal power of fatwas which are different for each country. Fatwas or fatwa institutions that are within the legal system or structure of a government have a more binding legal position and power than those that are outside the legal system and government. The country of Saudi Arabia, for example, specifically includes fatwas in Article 45 (forty five) of the country's constitution which states "The source of fatwas in the kingdom of Saudi Arabia is the Book of Allah and the Sunnah of His Messenger. This system explains the organizational structure of senior scientists, their scientific studies, fatwa and characteristics." The Egyptian state has officially had a Daral-Ifta' (an office that issues fatwas) since 1895 which is headed by the state grand mufti. The Egyptian Fatwa Institute is an institution under the Ministry of Justice.

The position of the legal system in the two Islamic countries is different from that in Indonesia, as in Indonesia, on the one hand, Fatwas are only considered mere appeals, but on the other hand, there are also Fatwas that must be followed, such as sharia economic Fatwas that must be followed by sharia banking, if banking sharia is not followed, the MUI can give a warning and propose to the Financial Services Authority (hereinafter referred to as OJK) to take action against sharia banking, this shows that there is an inconsistency with the MUI Fatwa that applies in Indonesia. Fatwas issued by the MUI may not conflict with positive law existing in Indonesia, however there are some fatwas which are considered contradictory, one of which can be seen from Indra Satriani's writing in his thesis entitled "The Position of the ITE Law and MUI Fatwas and Their Implementation on Users Social Media at UIN Alauddin Makassar" which states that: "The implementation of criminal acts against Law no. 11 of 2008 concerning 7 Electronic Information and Transactions is felt and seems to have been actually implemented, however the implementation of the action is contrary to MUI Fatwa No. "No. 24 of 2017 concerning Laws and Guidelines for Congregating Through Social Media is not visible at all, in fact many Muslims in Indonesia and especially at the Alauddin State Islamic University in Makassar are not aware of the existence of this fatwa."

Apart from the fatwa above, there is also an MUI fatwa which has caused controversy in Indonesian legal politics. Many fatwas have been issued by the MUI, there are two fatwas that have received public attention in recent times, namely regarding the "Statement of the Mayor of Jakarta Basuki Tjahaya Purnama" on 11 October 2016 as in the video in the Thousand Islands with Fatwa No. 56 of 2016 concerning "Laws for Using Non-Muslim Religious Attributes" on December 14 2016. The problems described previously raise many questions about whether the MUI fatwa is



included in Indonesian positive law or not. Lili Rasjidi stated that there are several meanings of law, including: Law is a relationship between a person and a thing (object, affair), which causes that thing to be in a certain relationship with that person, namely becoming his property (becoming his);

Law is a statute, or better still a complex of legislation; Dutch law is a complex of legislation that in the Netherlands regulates public life; criminal law is a complex of legislation that regulates punishment for criminals; and Law is a science that provides knowledge about law, knowledge about legislation, and knowledge about the relationships that have been mentioned, which causes us to know what belongs to various charms.

Law is an order of human actions. "Order" is a system of rules. Law is not, as is usually said, only limited to regulations. Law is a set of regulations that contain a kind of unity that is understood through a system. It is impossible to grasp the essence of law if we limit our attention to a separate regulation. The essence of law can only be fully understood based on a clear understanding of the relationships that form the legal order. As for the various types of legal divisions, one of them is the division of law according to the time of enactment, namely: Positive Law (Ius Constitutum) Ius Constitutum (Positive Law) is a legal regulation that applies at this time or now to society from within a certain area. Jus Constitutum is a law that applies to a society in a certain place at a certain time. Ius Constituendum Ius Constituendum is a law that is expected to apply in the future.

Basic Law (Natural Law) Natural law is law that applies everywhere at all times to all nations in the world. Based on this background, researchers are interested in examining the position of fatwas issued by the Indonesian Sharia Council, the Indonesian Ulema Council (MUI) in the legal system in Indonesia and developing them into one unit in the form of a dissertation with the title: "The Legal Politics of DSN-MUI Fatwas in Sharia Banking Industry Legal Certainty Perspective". Formulation of the problem

- 1) What is the regulation, influence and position of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and its Fatwa in the activities of the Sharia Banking Industry in Indonesia?
- 2) What is the legal politics of the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and its influence on regulations and operational guidelines for the Sharia banking industry?
- 3) What is the Ideal Concept of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and its Fatwa in a National Legal System Based on Pancasila?



## **Methods**

Methodology in legal research describes the procedures for carrying out legal research. Legal research is a process of discovering legal rules, legal principles and legal doctrines in order to answer the legal issues faced. Legal research is a know-how activity in legal science, not just know-about, as a know-how activity, legal research is carried out to solve the legal issues faced. This activity requires the ability to identify legal problems, carry out legal reasoning, analyze the problems faced and provide solutions to these problems. The research method used by the author in this research is as follows

Types of research Legal research is carried out to find solutions to legal issues that arise. Research methods are the science of the stages that must be followed in a research process. Or science that discusses scientific methods in seeking, developing and testing the truth of knowledge." This type of legal research is normative research. According to Peter Mahmud Marzuki, all research related to law (legal research) is always normative. This normative type of research uses qualitative analysis, namely by explaining data in the form of existing primary, secondary and tertiary legal materials with words or statements, not with numbers. This research was carried out by examining library materials consisting of primary legal materials and secondary legal materials. These materials are arranged systematically, studied and then compared to draw conclusions regarding the problem being studied. Normative legal research can be classified as follows:

Positive Law Inventory; Discover legal principles and doctrines;

Finding the law for a case in concert;

- 1) Research on legal systematics;
- 2) research on synchronization levels;
- 3) comparative legal research; And
- 4) legal history research.

Problem Approach Legal research has several approaches that are used to obtain information from various aspects regarding the issue that is being tried to find an answer. The approach that the author will use in this thesis is the statutory approach, this approach is carried out by examining all laws and regulations that are related or related to the legal issue being handled or researched, the conceptual approach (conceptual approach) , this approach departs from the views and doctrines that have developed in legal science, and the comparative approach (comparative approach), this



approach departs from its main objective of obtaining information and comparison of laws applied in other countries and between regions within the Republic of Indonesia which are deemed relevant for comparison, and will examine the legal history related to the issues at issue. Legal writing This dissertation studies views and doctrines in legal science, the author will find ideas that give rise to legal understandings, legal concepts, theories and legal principles that are relevant to the issue at hand. Understanding these views and doctrines is a basis for the author in building a legal argument in solving the issue at hand.

**Data Sources and Types** Primary legal materials are legal materials that are authoritative, meaning they have authority. The primary legal material in this research consists of books on the MUI Fatwa and other related regulations, namely: Al-Qur'an and Hadith. Legislative regulations, namely Law of the Republic of Indonesia Number 12 of 2011 concerning the Establishment of Legislative Regulations as amended several times, most recently Law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011; Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking; And Law of the Republic of Indonesia Number 11 of 2006 concerning the Government of Aceh. Compilation of Islamic Law Secondary Legal Materials , Secondary Legal Materials in this research are legal materials that provide explanations of primary legal materials, including:

Expert opinions relating to the research title; Reading books related to the research title; And Research results and other relevant literature elements. **Tertiary Legal Materials** Tertiary Legal Materials in this research are legal materials that support this research which are taken from magazines, newspapers, the internet and legal dictionaries.

**Data Collection Method** The procedure used by the author is a literature study method. The literature study method is taking data from the literature which is used to search for concepts, theories, opinions and discoveries that are closely related to the main problem of this research. **Data analysis Data Process** is the process of finding answers to the main problem. This process starts with collecting materials to be arranged systematically and continues with analyzing the research materials carefully. The author examines the legal issues raised based on the materials that have been collected, and conclusions can be drawn in the form of arguments that answer the legal issues, and finally provides a prescription based on the arguments that have been built in the conclusion. The steps in conducting research on legal materials above are an analysis of legal materials for research that uses the normative juridical research type. The aim of research using legal materials is to find answers to the main problems discussed. The results of the analysis of legal materials are then



discussed in the form of a conclusion using the deductive method, namely a method of drawing conclusions from a discussion of general issues to specific conclusions. Furthermore, the results of this research answer the problems raised,

## **Results / Discussion**

### **1. How is the Regulation, Influence and Position of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and its Fatwa in the Activities of the Sharia Banking Industry in Indonesia**

That it cannot be denied that Islam is adhered to by the majority of Indonesian society. According to Achmad Ali, the principles of Islam which originate from the Al-Qur'an are to provide benefits to all mankind, as the aim of realizing these benefits is in accordance with the general principles of the Al-Qur'an. 'an, namely: Al-asl fi al-manafi al-hall wa fi al-mudar al man'u (everything that is beneficial is permitted and everything that is detrimental is prohibited) La darara wa la dirar (do not cause harm and do not become a victim of harm) Ad-darar yuzal (danger must be eliminated)

This benefit is also in line with the theory of Utilitarianism which was first developed by Jeremy Bentham (1748-1831). The problem faced by Bentham at that time was how to assess the merits and demerits of a socio-political, economic and legal policy morally. In other words, how to assess a public policy that has a moral impact on many people. Based on this view, Bentham found that the most objective basis was to see whether a particular policy or action brought benefits or useful results or, conversely, harm to the people involved. The basic principles of Jeremy Bentham's teachings are as follows:

- 1) The aim of the law is that the law can provide guarantees of happiness to many new individuals. Bentham's principle of utility states "the greatest happiness of the greatest number" (the greatest happiness for the greatest number of people).
- 2) This principle must be applied qualitatively, because the quality of pleasure is always the same.
- 3) To realize individual and societal happiness, legislation must achieve four objectives: To provide subsistence (to provide a living) To Provide abundance (to provide abundant food) To provide security (to provide protection) To attain equity (to achieve equality)
- 4) Apart from Bentham, the next follower of Utilitarianism was John Stuart Mill. In line with Bentham's thoughts, Mill has the opinion that an action should aim to achieve as much happiness as possible. According



to Mill, justice originates in the human instinct to reject and avenge the damage suffered, both by ourselves and by anyone who gets our sympathy, so that the essence of justice includes all the moral requirements that are essential for the welfare of humanity.

- 5) Several laws and regulations in Indonesia as a conceptual basis for connecting variables
- 6) Legislative regulations in Indonesia have been regulated in Law Number 12 of 2011 which has been amended several times, most recently with Law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 concerning the Formation of Legislative Regulations, according to experts themselves, it is very diverse. Regulations are laws in abstracto or general norms which are generally binding (generally applicable) and whose task is to regulate matters of a general nature. The term legislation has two meanings, namely as follows: Legislation is the process of establishing/forming state regulations, both at the central and regional levels; Legislation is all state regulations, which are the result of the formation of regulations, both at the central and regional levels.

According to P.J.P Tak, the legal literature states that not all regulations can be categorized as legal regulations. According to Maria Farida Indrati, the term legislation (legislation, wetgeving, or gesetzgebung) has two different meanings, namely Legislation is the process of establishing/forming state regulations, both at the central and regional levels Legislation is all state regulations, which are the result of the formation of regulations, both at the central level and at the regional level; The formation of statutory regulations is known by several general principles, including: The law does not apply retroactively. This principle can be read in Article 13 of *Algemene Bepalingen van Wetgeving* (hereinafter referred to as AB) whose translation reads as follows: "Laws are only binding for the future and have no retroactive force." Article 1 Paragraph (1) of the Criminal Code, which reads as follows: "No incident can be punished, except on the basis of the strength of a prioritizing criminal law." The meaning of this principle is that laws may only be used for events mentioned in the law, and which occur after the law is declared effective .

Inviolable law. The meaning of this principle is as follows there is a possibility that the contents of the law deviate from the Constitution; And Judges or anyone else does not have the right to judicial review of this law. This right is only owned by the legislator. Laws as a means to achieve as much spiritual and material prosperity as possible for society and



individuals, through renewal (principle of welvarstaat); Higher laws override lower laws (lex superiori derogate lex inferiori).

Legislative regulations as guidelines for legal subjects to act and behave must show that the substance of the statutory regulations is in line with other regulations (consistency). In this dissertation research, the statutory regulations used as a tool to analyze problems are Law Number 12 of 2011 which has been amended several times, most recently with Law of the Republic of Indonesia Number 13 of 2022 concerning the Second Amendment to Law Number 12 of 2011 Regarding the Establishment of Legislative Regulations, Law of the Republic of Indonesia Number 21 of 2008 concerning Sharia Banking and Law of the Republic of Indonesia Number 11 of 2006 concerning the Government of Aceh as hierarchically the position of several of these laws and regulations are parallel or the same, as well as the Regulations Other relevant laws and regulations.

## **2. How is the Legal Politics of the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and its Influence on Regulations and Operational Guidelines for the Sharia Banking Industry**

The Indonesian Ulema Council (MUI) is a forum or assembly that brings together Indonesian Muslim ulama, zu'ama and intellectuals to unite the movements and steps of Indonesian Muslims in realizing common ideals. The Indonesian Ulema Council (MUI) was founded on 7 Rajab 1395 H., coinciding with 26 July 1975 AD in Jakarta, as a result of meetings or deliberations of ulama, intellectuals and zu'ama who came from various parts of the country. The MUI's goal is to enforce and control public expressions of Islam under the assistance of the state (in this case the Ministry of Religion). MUI is required to become a national authority. In the political situation in the early 1970s, various controversies emerged regarding issues related to religion, such as the 1974 Marriage Law Draft.

That the MUI's position in the Constitutional system of the Republic of Indonesia is only in the political infrastructure element, therefore the Fatwa issued does not have binding legal force and does not include any of the statutory regulations or other statutory regulations. The foundation of the MUI was motivated by two things, namely the first was a response to the revival of the Indonesian nation after 30 years of independence and the second was concern about sectarianism which dominated Muslim politics in the 1970s, so that it began to ignore the issue of the spiritual welfare of the people.

Before MUI was founded, several meetings were held involving ulama and Islamic figures. The meeting discussed the idea of the importance of



the existence of a council of ulama which carries out the function of collective ijtihad and provides religious input and advice to the government and society. From September 30 to October 4 1970, a conference was held at the Islamic Da'wah Center. The conference aimed to form a council of ulama whose function was to give fatwas. The conference realized that the idea of forming an ulama assembly came from a paper presented by Ibrahim Hosen which quoted the decision of Majma' al-Buhuts al-Islamiyyah regarding the importance of a collective ijtihad. However, KH. Abdul Malik Karim Amrullah or who is more popularly known as Buya Hamka, as was also the presenter of the paper at that time, strongly rejected this idea, especially regarding the involvement of secular scholars in collective ijtihad. Buya Hamka recommended to President Soeharto to choose a mufti who could provide advice to the government and Indonesian Muslims.

In connection with various mandates from both the head of state and a number of ministers as well as thoughts and suggestions from deliberation participants, at the First (First) National Conference (Munas) the MUI has formulated in Article (4) the main guidelines which state the functions of the MUI, these functions are:

- 1) Providing fatwas and advice on religious and social issues to the government and Muslims in general as a good deed, nahi munkar, in an effort to increase national resilience.
- 2) Strengthening Islamic brotherhood and implementing harmony between religious communities in realizing national unity and integrity .
- 3) Representing Muslims in inter-religious consultations. .
- 4) Liaison between ulama and umara (government) and act as a mutual translator between the government and the people to make national development a success .
- 5) The Ulama Council is non-political and non-operational.

The Position and Understanding of Fatwa , etymologically fatwa comes from the Arabic al-fatwa. Fatwa means an answer to something that is impossible in matters of Islamic law and law or an explanation of a legal problem. According to al-Fayumi, fatwa comes from the word "al-fata" which means "strong youth". This meaning conveys the meaning that a mufti must be strong in providing arguments from the person requesting the fatwa. In the book "Lisana al-'Arab", fatwa is clearly explained with the term "alfutya-wal futwa" as interpreted by "ifta" which is the masdar term of the words "ifta', yafti-ifta" which means "to give an explanation " or "something promulgated by a faqih".



The MUI Fatwa Commission has its own definition of fatwa, namely an explanation of Islamic law or teachings regarding problems faced or asked by the community, and is a guideline for implementing religious teachings. The act of giving a fatwa is called Ifta', which is a job of giving advice or fatwa. The person who issues the fatwa is called Mufti, while the person who asks for the fatwa is called Mustafii. According to al-Ghazali, Mustafi should not ask for a fatwa except from someone who is known to have knowledge and be fair, as in this case it is not permissible to ask for a fatwa from an ignorant person, so in the terminology of fiqh, a fatwa is defined as statements about Sharia law that are not binding to follow. Fatwa occupies a strategic and very important position, because the mufti (fatwa giver), as said by Imam Asy-Syathibi, has the position of caliph and heir of the Prophet SAW, this is contained in the hadith narrated by Abud Daud and Tirmidhi, namely that "Ulama are heirs of the Prophets" in conveying Sharia law, teaching people, and warning them to be aware and careful.

Fatwa functionally has tabyin and tawjih functions. Tabyin means explaining laws which are practical regulations for society, especially people who hope for their existence. Tawjih is an action that provides guidance and enlightenment to the wider community regarding contemporary religious issues. A person in making a fatwa must have several basic requirements and must use several methodologies, namely:

- 1) A fatwa expert must know in detail the entire contents of the Koran, be able to analyze and interpret it in a stable and convincing manner.
- 2) A fatwa expert must meet the requirements of a mujtahid, and is prohibited from unanimously following other mujtahids (no blind taqlid);
- 3) Fatwas must not depart from the human rights stance promoted in Islam from the beginning. These rights include the right to embrace a religion and follow the interpretation of a certain group of interpreters;
- 4) The truth of a fatwa is relative so it is always possible to change it along with changes in space, time and tradition;
- 5) The fatwa must be preceded by adequate research and description of the subject matter, including inviting discussion from the relevant parties about what the fatwa will be.

**3. What is the Ideal Concept of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) and its Fatwa in a National Legal System Based on Pancasila?**



The concept of legal benefits for the majority group. That it cannot be denied that Islam is adhered to by the majority of Indonesian society. According to Achmad Ali, the principles of Islam which originate from the Koran are to provide benefits to all mankind, as the aim is to realize these benefits. in accordance with the general principles of the Qur'an, namely Al-asl fi al-manafi al-hall wa fi al-mudar al man'u (everything that is beneficial is permitted and everything that is detrimental is prohibited) La darara wa la dirar (do not cause harm and do not become a victim of harm) Ad-darar yuzal (danger must be eliminated) This benefit is also in line with the theory of Utilitarianism which was first developed by Jeremy Bentham (1748-1831). The problem faced by Bentham at that time was how to assess the merits and demerits of a socio-political, economic and legal policy morally. In other words, how to assess a public policy that has a moral impact on many people. Based on this view, Bentham found that the most objective basis was to see whether a particular policy or action brought benefits or useful results or, conversely, harm to the people involved.

The basic principles of Jeremy Bentham's teachings are as follows: the aim of law is that law can guarantee happiness to new individuals and many people. Bentham's principle of utility states "the greatest happiness of the greatest number" (the greatest happiness for the greatest number of people). This principle must be applied qualitatively, because the quality of pleasure is always the same. To realize the happiness of individuals and society, legislation must achieve four goals: To provide subsistence (to provide a livelihood) To provide abundance (to provide an abundance of food) To provide security (to provide protection) To attain equity (to achieve equality) Apart from Bentham, the next follower of Utilitarianism was John Stuar Mill. In line with Bentham's thoughts, Mill has the opinion that an action should aim to achieve as much happiness as possible. According to Mill, justice originates in the human instinct to reject and avenge the damage suffered, both by ourselves and by anyone who gets our sympathy, so that the essence of justice includes all the moral requirements that are essential for the welfare of mankind.

## **Conclusion**

In making norms as regulations, they are divided into two, namely, some constitutions give certain powers to certain administrative bodies and some constitutions give powers to administrative organs, especially the head of state. In this case, in the unusual condition of establishing regulations to resolve a problem that is usually regulated by the legislative body through law, the legal basis of a country is the basis for the formation of laws (Formell gesetz) and other lower regulations. The important contents of basic rules, apart from the outlines or main points of a country's policy, are the



rules that enforce and give binding force to legal norms as statutory regulations or in other words provide meaning as a process or procedure for forming regulations. generally binding laws and regulations. This shows that to create an orderly life, there is a need for objective regulatory guidelines that must be obeyed together, thus showing that the law is a tool for determining patterns of behavior.

### **Acknowledgments**

The Islamic justice institution has developed and functions as an institution that resolves the problems of Muslims in Indonesia's positive legal order, namely the Islamic Religious Courts institution. The first step after Indonesia's independence that the government took was to hand over the guidance of the Religious Courts from the Ministry of Justice to the Ministry of Religion through Government Regulation No. 05/SD/1946, as in 1948 Law No. 19 of 1948 concerning the Composition and Powers of Judicial Bodies was issued. the validity period of which will be determined by the Minister of Justice. This law includes the Religious Courts into the General Courts

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