

# Harmonization Patterns and Positivism of Fatwa Into Indonesian National Law: Study On The Renewal Fatwa of Mui In Islamic Law

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## ABSTRACT

The concept of Indonesian independence is a country of laws but not a religious state nor a secular state. Certainty that Indonesia is a country of law is based on the results of the 1945 changes, Article 1 Paragraph (3) Amendment to the 1945 Constitution confirms that Indonesia is a country of law. In another aspect, Indonesia declared as a religious nation state (religious nation-state). In national and state norms be used as guidelines of religion under Article 29 paragraph (1) "State based upon the belief in God Almighty." This article by Hazarin mean that laws established by the state must not conflict with the teachings contained the recognized religions in Indonesia. Ideally, MUI fatwa presence as unifier, lightening and harmonizes with national laws, for the interests of MUI fatwa is demanded to reform the contents of fatwa by considering Indonesian and modernity. At another level of national law also demanded to be responsive of the *living law* of life in Indonesian society.

**Key Words** : Harmonization, Indonesian National Law, Islamic Law

## 1. Introduction

Relationship between religion and state in a cage long enough silenced the interpretation of Pancasila monopolized by the New Order government (Jazuni : 2005) . Single interpretation which was monopolized by the New Order government, including the Sharia position regarding the national law. The existence of the Indonesian Ulema Council (MUI) in the context of the relationship between religion and the state by the New Order government's legitimacy to serve as the control of Muslims (M. Rashid Hamdan : 2007) within the context of the control of the Muslims, then the Said Aqil Siraj, chairman of NU accused that the establishment of MUI as an organization product of New Order regime, once thick with the imposition of the will. Said Aqil accused MUI establishment with the intent to drive the scholars in the interest of the government in maintaining the status quo.

The debate about the relationship between religion and the state, by Abdurrahman Wahid (Gus Dur) is mentioned as a problem of the most haunting thought of the Muslims in Indonesia is how to formulate the relationship between religion and state. This problem is due to the fact that Islam is a religion of law (.Gus Dur Answering Zaman Change: *Thought KH Abdurrahman Wahid collection, 4<sup>th</sup> President of the Republic of Indonesia*, Kompas, (Jakarta: 1999). In Islamic view, law is not separate from religion (Asaf A.A. Fyze : 1995).

The same view was also presented by Azhar Bashir, that Islamic law is an integral part of Islamic teachings that can not be removed or separated from the lives of Muslims, on the basis of their Islamic beliefs. Therefore, Muslims will have peace of mind in religious life, if the basis of Islamic law and the order of their lives, which gained full support from the state, to be confirmed in legislation. It is in the Republic of Indonesia, the Pancasila as the state philosophy and constitutional basis of the 1945 Constitution as not only just possible even a juridical constitutional necessity ( Bashir Ahmad Azhar : 1993) . It is also expressed by Muhammad Daud Ali that the Islamic law as the law derived from the Quran and al-Hadith became part of the religion (Muhammad Daud Ali : 1996).

Jimly Asshiddiqie argued that the relationship between religion and the state must be developed in the same direction, not left as a growing contradictory today (Jimly Asshiddiqie : 1996). Further Jimly that Muslims as a good citizen of Indonesia, in everyday life to hold on to two ropes at once, namely 1) Quran along Sunnah and 2) 1945 Constitution and its underlying legislation (Masdar Farid Mas'udi : 2010). The same opinion from Mahfud MD said that the harmony of relationship between religion and the state may only be created if there is a coherent understanding that our constitution is the basis for the unifier of *ukhuwah wathaniyah* at Indonesian nation. The constitutional clause and the intersection of religion clause as in the book, by Mahfud MD mentioned that the state is just as important as religion. Strengthen the state as important as strengthening religion.

Concrete efforts to have the harmony between religion and state by Rifyal Ka'bah is suggested that institutions like Majelis Tarjih Muhammadiyah and Lajnah Bahtsul Masa'il Nahdatul Ulama (NU) took the role by conducting studies of the development of the law in order to fill national law, and on the other that the official institutions of the state to accommodate Islamic law in order to enrich the national law ( Rifyal Ka'bah : 1999).

Spirit to make MUI fatwa harmonizes into national law can consider a new paradigm offers to build Islamic law that could dialectic with the modern legal system. Like dialectic with constitutional issues, civil society, democracy, public accountability, human rights, etc..( Muhyar Fanani : 2008). Spirit of fiqh like Shahrur paradigm is to modernize the MUI fatwa by some patterns, namely 1) to make fiqh as as codified public law with respect to modern conceptions like constitutionalism, pluralism, civil society, democracy and opposition. 2) make fiqh law that runs within the framework of the constitution. Constitutional means in a broad sense is a law that controls every device, dividing and limiting government powers and functions in accordance with the aspirations of all people. Constitutionalism also means the laws, institutions and customs derived from the principles of reason to achieve certain objectives in accordance with the agreement the

government agrees to the community (Abdullah Ahmed an-Na'im : 2000) 3) make fiqh as positive law. According to experts, the positive law is the legal norms made by the state authorities (John Austin :2000). MUI fatwa believed by Shahrur to be positive law, if the fatwa patterns can stand to what is offered through border theory.

Further Ismail Suny, an expert in constitutional law states that the position of Islamic law can be divided into two periods, the first, the acceptance period of Islamic law as a source of persuasive, and the second, the period of Islamic law as authoritative sources. The first period began on June 22, 1945, since the signing of the Jakarta Charter listed 7 words "*with the obligation to carry out Islamic sharia adherents*". Is a persuasive source. After the Jakarta Charter was placed in the Presidential Decree on July 5, 1959, the acceptance of Islamic law into the second period, has become an authoritative source (Ismail Suny : 1994).

Absorption of Islamic law and the harmonization model through the MUI fatwa institutions can also be based on three academic reasons written by Abdul Gani Abdullah (Abdul Gani Abdullah : 1997) namely: 1) the philosophical basis, meaning that the substance of the normative teachings of Islam has established a way of life that gave birth epistemology, moral ideals and spirit of the law in the socio-cultural life of the community. This process is going on for years so that it reflects the correlation between the teachings of Islam with social reality and the phenomenon of religious practice. 2) sociological basis, meaning love of law and legal awareness of Indonesian society that developed in Islamic societies have a level of actuality Indonesian Islam as a submissive behavior that evolved into *tauliyah*. And 3) legal basis, meaning that history shows found various types of legislation containing doctrine and Islamic values before the enactment of theory receptio by Dutch Colonial, through-reformation era. Such as: the Law on Provision of Hajj, Zakat Management Act, donation, Shariah Banking, Shariah Bonds, the Marriage Law, the Religious Courts, and the Special Region of Aceh Special Autonomy (Denny JA : 2004).

From the brief description in the preface above, it is necessary to be concerned the problems as follows: What is the pattern of harmonization and positivism of Indonesian Ulama Fatwa Council to the National Law? How to update projections Fatwa Council of Ulama Indonesia became the National Law? course of these problems and gets answers that harmonization of positivism of MUI into national law can be established in order to strengthen national laws of Indonesia.

## 2. Research Method

This research is a normative law, because the starting point in the analysis of legislation. The analysis is intended MUI fatwas that harmonize and have positivism into some forms of legislation as follows: MUI fatwas and the Act as follows: 1 MUI fatwa about Zakat to the Law No. 38 Year 1999 on Zakat, 2) MUI fatwa on pilgrim to Mecca into Law No. 13 Year 2008 on the organization of pilgrim to Mecca . 3) DSN-MUI Fatwa on Sukuk into Law No. 19 Year 2008 on Sharia Securities. 4) Fatwa MUI Endowments Money to the Law No. 41 Year 2004 on Waqf. 5) MUI Fatwa on Bribery, Corruption and Gifts to officials with Law No. 7 of 2006 anti-corruption. 6) MUI Fatwa on Terrorism with Law No. 15 Year 2003 on Anti-Terrorism. 7) Harmonization MUI fatwa on Pornography and behave porn with Law No. 44 Year 2008 on Pornography and behave porn.

Because this type of research is a normative law, it can be used several approaches (Philip M. Hadjon : 1997). As is usual in normative legal research, this dissertation research is to use multiple approaches, namely regulatory approach (statutory approach), approach to history (hystorical approach), and the comparative approach (comparative approach).

## 3. Results and Discussion

### a. MUI Fatwa of Positivism Pattern

Indonesia is known as *a religious nation state*, which makes the Pancasila as the basic state, then the result is religion as the source of value, the source of moral and religious teaching is positioned as the raw material of national law. for harmonization and positivism of interests discovered the existence of Islamic law in the national law there are four forms of embodiment, namely: 1) Islamic law in the national law as an integral part of it; 2) Islamic law there, in the sense of independence that is recognized nationally and enforceable as law national; 3) Islamic law there, in terms of norms of Islamic law (religion) serves as filter materials Indonesian national law, and 4) Islamic law exists in national law, in the legal sense as the main ingredient and the main elements of the Indonesian national law. In short there is Islamic law in Indonesia's national laws.

### b. Harmonization of MUI Fatwa on Bribery, Corruption and Gifts to officials with Law No. 7 of 2006 resist corruption.

In explanation Public Law No. 7 of 2006 explained that corruption is a threat to democratic principles, which uphold transparency, accountability, and integrity, as well as the security and stability of the Indonesian nation. Because corruption is a crime that is both systematic and detrimental to sustainable development requires preventive measures and eradication that is comprehensive, systematic, and continuous.

MUI fatwa on Corruption and Bribery is not as detailed as the Law on Anti-Corruption RI set. Because the position of the MUI fatwa as an amplifier and gang legitimize that act is an act of corruption and bribery from taking what is under their authority in a way that is not correct according to Islamic law. on other aspects of the MUI fatwa implies that corruption became common enemy (common enemy) is not only the enemies of the state, represented by Bemberantasan Corruption Commission (KPK), but also a common enemy religions, Islam is more specific in this case is represented by MUI.

This is similar to what is disclosed by Bryan S Tunner who say ( Bryan S Tunner : 2005 ) that religion is very influential position in providing social control.

### c. Harmonization MUI Fatwa on Terrorism by Law Decree No. 15 of 2003 Regarding resist Terrorism

In the guise of jihad terrorism issue by MUI institution has taken the stance that the difference between terrorism and jihad is;

Terrorism is a crime against humanity and civilization kedauatan pose a serious threat to the State, the danger to the security, world peace and harm the public welfare. Terrorism is a form of organized crime that well (well

organized), transnational crime is classed as extraordinary (extraordinary crime) which does not discriminate targets (not discriminatory) ".

In the treasure of Islamic Jurisprudence, terrorism meets crime elements (*jarimah / hirabah*). The jurists define *al-muharrib* by term: people who took up arms against the people and scare them so they do not include our group. Jihad containing two senses : 1) all the effort and the utmost effort and a willingness to endure hardships in the fight against the enemy and resist aggression in all its forms. Jihad in this sense is also called *al-qital* or *al-harb*. 2) any earnest effort and sustained to maintain and elevate the religion of Allah (*li i'ilaai kalimatullah*).

As for the difference between terrorism and jihad by MUI is 1) Terrorism. a) destructive (*ifsad*) and the anarchist / *chaos (faudha)*. b) aim to create a sense of fear and / or destroy the other party. c) without rules and without limits target. While 2) Jihad a) nature make improvements (*ishlah*) though by war. b) aim to establish the religion of Allah and /or defend the rights of oppressed parties. c) is done by following the rules prescribed by law with the obvious enemy target. from the difference conveyed by the MUI fatwa, Clearly appear that there is no correlation at all related terminology *Terrorism* and *Jihad*.

Suicide bombing and *amaliyah al-istisyhad* the MUI fatwa is forbidden because desperate measures (*al-ya'su*) and harm themselves (*ahlak an-nafs*), both done in the area of peace (*dar al-shulh/daar al-salam/ daar al-da'wah*) or in regional war.

Law No. 15 of 2003 Regarding Resist Terrorism was clear that as a regulation course more detailed and detail, when compared with the MUI fatwa. However, the most urgent is the principle of terrorism have been enemies of the people of Indonesia both Muslims and non-Muslims. MUI fatwa that forbid acts of terrorism should be appreciated all the Muslims of Indonesia as well as a strong legal decision, based on consideration of legal arguments strong and true..

What does MUI in line with the principles of recognition and protection of Human Rights (HAM). In Islamic doctrine of human rights is not only recognized, but is protected. Therefore, in this perspective there are two very important principle of recognition of human rights and the principle of the protection of these rights (.Muhammad Tahir Azhary: 2004).

#### **d. Harmonization MUI fatwa on Pornography and Porn Action by Law No. 44 of 2008 concerning Pornography**

Law 44/2008 on Pornography and Porn Action Article 14, concerning 1) the terms and procedures for licensing the manufacture, distribution and use the product of pornography for the purpose of education and health care interests. 2) the manufacture, distribution and use of pornography are prohibited to be produced, created and be augmented, duplicated, distributed, published, imported, exported, offered, sold, leased, or provided containing explicit pornography.

On the basis of the article, then the MUI proposes to harmonize the way of participating in the proposed substance Draft Regulation (RPP), *ijma 'ulama* ask MUI Fatwa Commission to urge and encourage actively the implementation of article 17 of Law No. 44 Year 2008 on Pornography is confirmed that the government and regional governments must take precautions, manufacture, dissemination and use of pornography.

In this context, the harmonization of national and religious framework of thinking as the result of *ijma 'ulama* in Indonesia in deciding *masail asasiyah wathaniyah* weigh on national life there are various phenomena associated with modernization and globalization needs to be harmonized framework of religious thought in the context of national life. In my opinion, what the proposed MUI is part of the actualization of *maqasid al- syari'ah* in the context of *khifdu al-nafsu*, and maintain human dignity hartkat perspective of Islamic law. that man is the best creation of God that protected complete with shame to keep his private parts. In fiqh studies related to human is obligatory to be protected and covered.

MUI steps to harmonize with the Law 44/2008 on Pornography Hazarin is in line with the interpretation that the interpretation of Article 29 Paragraph 1 of the 1945 Constitution "State based upon the belief in God Almighty, that there are only six of interpretation. Three of the 6 that are relevant to the analysis of this dissertation is as follows: 1) in the Republic of Indonesia should not apply anything contrary to the rules of Islam for Muslims, Christians rules for Christians, Hindus rules for the Hindus, and the rules for the Buddhist Buddha. 2) of the Republic of Indonesia shall run Islamic law for Muslims, for Christians Christian law, Hindu law for Hindus and Buddhist law for Buddhists who require assistance during implementation of state power. 3) Sharia that does not require the help of state power, any obligation to conduct its own adherents. In line with the Hazarin thought, as the phrase Notonegoro that "Belief in God Almighty" in the preamble of the 1945 Constitution that set out in article 29 of the Charter is animated by the spirit of Jakarta and is a continuum with it.

#### **e. MUI fatwa Positivism about Endowments Money into Law No. 41 of 2004 on Waqf.**

MUI fatwa on May 11, 2002 to coincide with the 28 Safar 1423 H issued a decision on the permissibility of cash waqf. In his definition, waqf money (cash waqf / *waqf al-nuqud*) is defined as a person waqf, a group of people, institutions or legal entity in the form of cash. In this definition includes securities. Thus the definition of waqf delivered MUI has developed a definition of the original endowment is more oriented on object. In this cash waqf, MUI also want the waqf cash flow distribution in the corridors of Islamic law and that must be preserved is the value of money. Therefore the money that has been diwakafkan should not be traded, assigned or inherited.

See the benefits waqaf above, formed of Act No. 41 of 2004 concerning endowments and continued with the issuance of Government Regulation No. 42 Year 2006 on Implementation. In the perspective of this Act waqf is rated as one of the religious institutions that have the potential and economic benefits, therefore the state in this case the need to intervene in order to make the management of waqf enabled devices are able to function effectively and efficiently worship that cater to the interests and welfare of the people.

In explanation Public Law No. 41 Year 2004 on Waqf explained that the purpose of the Unitary Republic of Indonesia as stated in the Preamble to the Constitution of the Republic of Indonesia Year 1945, among others, is to promote the general welfare. One strategic move to promote the general welfare, it is necessary to increase the role of waqf as a religious institution that not only aims to provide a range of social and religious facilities, but also has the

potential of economic power, among others, to promote the general welfare, so that its use should be developed in accordance with Islamic principles .

Some important points in Law No. 41 of the Endowments relation to cash waqf is as follows: 1) the definition of waqf in this Act already includes waqf endowments in the sense of moving objects.

Definition endowments also includes the value of an object such as money, securities, leases, intellectual property rights, and others. 2) a certificate of cash and cash waqf endowments. This certificate is used as proof of payment of waqf property issued by the Islamic financial institutions and submitted to *Nazhir* and *Wakif*. 3) the presence of Islamic financial institutions involved in the management of waqf property, including cash waqf / money. Thus Law No. 41 of 2004 on waqf closely related to the Law No. 21 Year 2008 on Islamic Banking.

From the three points above the cash waqf and explanations advised by MUI, it is understood that the Law No. 41 of 2004 on the Waqf to use Islamic law as national law-making raw material / positive with regard to the provisions of cash waqf. MUI fatwa good cash waqf and Law No. 41 of 2004 on Waqf, they both define endowments, more broadly, that the coverage of endowment covers moving objects including money and things are not moving.

In the context of the MUI fatwa of positivism with national law, the provisions of the donation essentially based on sharia and legislation are subject to the settings that can be positivisasi fatwa issued by MUI endowments, among others for creating law and order and to protect the administration of waqf property waqf objects. This law asserts that the law of waqf deed must be recorded and reflected in the waqf deed and registered pledge and announced that the implementation is done in accordance with the procedures set out in the legislation governing the waqf and should be implemented.

This Law does not separates between waqf-expert who management of and utilization possessions wakaf limited for kinsfolk (expert heir) with waqf-khairi which intended for interests of the general public in accordance with the objectives and function waqf. Within this linkage is institution MUI with fatwa his progressive responds, that what is stated inside UU no 41 tanun 2004 on wakaf is a fiqh waqf version of the keindonesiaan. So at least in principle, and the principle of this law is not contrary to Islamic rules' then the MUI will respond as a synergistic positivisasi between the two. So they complement each other. Although the terminology is actually classical fiqh endowments, not the technical term recording.

From this aspect of building an positivisasi between MUI and the law on waqf. So what is the intent of national laws related to the welfare of the people, MUI culturally give legitimacy both from the theoretical as well as from the aspect *nashnya* *fiqihnya*. Because Islamic finance is intended to make it easier for mewakafkan wakif his money. Allotment of waqf property not solely for the benefit of social and religious facilities but also geared to promote the general welfare and the way to realize the potential economic benefits of waqf property. It allows the management of waqf property can enter the area of economic activity in a broad sense all these arrangements in accordance with the principles of Islamic economics and management.

MUI fatwa material in about Endowment Money is, if it is associated with the characteristics of Islamic law would have a strong foundation, that Islamic law is *harakah* or dynamic. *Harakah* or dynamic characteristics of this means that Islamic law has the ability to move, grow, live, and be able to answer the challenges of the times according to the characteristics attached to it. These characteristics can be done by way of *ijtihad* with the purpose of establishing Islamic law as needed. On this concept through *motode ijtihat* law reform is a necessity.

Hasbi said that *harakah* characteristics or dynamic Islamic law can be done through: 1) *istidlal* system of Islamic law are looking for something that *kulli* and *ma'lulnya*, 2) in Islamic law, particularly the areas of worship, respect the position of Islamic law person, whether in an atmosphere of ill, elderly, intelligent, ill. Islam gave snack out in connection with the law. Islamic law means everything in terms of responding to the dynamics or *harakah*. In the field *muamalah*, Islamic law also tried to maintain harmony defense relations between the two sides, constantly avoid the tyranny of one party to another. In the field of criminal law *jinayah* Islam seriously consider heavy and light *jarimah* and *uqubah*. And 3) Islamic law always wants perfection, balance and dynamics of law itself in response to the problem of time.

some understandings above. 1) First: Islamic Law have a synergistic role with the interests of the state. In the context of waqf, The interest is to maximize the potential and economic benefits for the people and the interests of worship *mensejahterkan*. Second, Islamic law is prone to Islamic law is a religious institution that has a historical-theological power tie. Indonesia's Islamic law Islamic law as it is covered by civil law or private law, waqf is one of them.

#### e. Positivisasi MUI fatwa on Zakat to the Law No. 38 Year 1999 on Zakat

MUI on January 26, 1982 to coincide with the 01 Rabi'ul Awal 1402 H issued a decision on Intensification Implementation of Zakat. The decision points are as follows: 1) earnings from services may be subject to zakat nisab and when to haul. 2) are eligible to receive zakat only eight *ashnaf* mentioned in Quran Surat at Taubah verse 60. If saha one *ashnaf* no part given to existing *ashnaf*. 3) for the interests and welfare of the Muslims, then that can not be collected through zakat channels, can be requested on behalf *infaq* and *Sadaqah*. 4) *infaq* and *Sadaqah* are governed by *ulil amri* withholding, for the purposes aforesaid, shall be adhered to by Muslims according to his ability.

Three years after the MUI fatwa about zakat decided the latter, the government made a regulation of the charity through Law No. 38 Year 1999 on Zakat. This law we can easily understand that Islamic law is used as the main raw material in the preparation, administration outside management. It seems to be a reasonableness given the zakat is one of the religious institutions are growing and developing in the Islamic society. Connection with the MUI fatwas that have been decided several years earlier, can be understood from the following explanation: first, the Government took a role in the management of zakat, *infaq* and *Sadaqah*. The Government shall provide protection, guidance and services to muzakki, *mustahiq* and *amil* zakat. For its part the government established the Zakat which has the main task to collect, distribute and utilize the zakat in accordance with the provisions of religion. second, productive distribution became part of the intersection between the MUI and Law No. 38 of 1999 concerning Zakat. As explained in chapter 16, verse 2 that

prioritizes the needs mustahiq and utilization for productive business. In chapter 17, also described, the results of not receiving zakat (donation, charity, etc.) received by the government, mainly for productive business use.

In the context of the MUI fatwa positivism into national law is actually in principle, what is stated in Law No. 38 of 1999 on the management of zakat, are accommodated in a fatwa issued by MUI. MUI fatwa like amil zakat, zakat on property law haram, withdrawal, maintenance and distribution of Zakat, as well as MUI fatwa on the distribution of property in the form of assets under management. But what is stated in the MUI fatwa about zakat is not technical and rigid, not as stated in Law No. 38 in 1999. So the pattern of the MUI fatwa of positivism of zakat into national law is the principle that eclectic positivism

#### **f. Positivisasi DSN-MUI Fatwa on Sukuk into Law No. 19 of 2008 concerning Sharia Securities.**

General Explanation of the Law No. 19 Year 2008 on Sharia Securities stating that the successful implementation of the national development program in creating a just society, and prosperous based on Pancasila and the Constitution of the Republic of Indonesia Year 1945 needs to be complemented by the financial management optimally. This can be achieved through increased efficiency in the management of state assets and the development of sources of financing the state budget, in order to increase the carrying capacity of the State Budget in driving sustainable economic development.

MUI fatwa that has been absorbed by Law No. 19 of 2008 that the financial transactions in accordance with Islamic sharia ban should be free of the following elements: (1) Riba, ie interest or return elements obtained from the use of money to get money (money for money) , (2) gambling, which is an element of speculation, gambling, and the attitude of chance, and (3) Gharar, which is an element of uncertainty are related to the delivery, quality, quantity, and so on. Another characteristic of the issuance of Islamic financial instruments that require the transaction support, procedures and mechanisms that are specific and different from financial transactions in general.

After the enactment of Law No. 19 of 2008 concerning Sharia Securities, MUI enters a new phase. Where MUI is in fact not an authorized public entity or authority to issue binding regulations as public, like public legal entity. Before the enactment of Law No. 19 of 2008 the MUI fatwa is not binding. Given the MUI fatwa included in the hierarchy or sort order perundang and regulations in Indonesia as defined in article 7, paragraph 1 of Law No. 12 Year 2011. Thus, Law No. 19 of 2008 is indirectly makes the MUI Fatwa related to SBSN "binding force". So that Law No. 19 of 2008 is an umbrella legal standing holding capacity in the MUI fatwa issuance of this certificate

##### **a. Ideal Projection of Positivism of MUI Fatwa into National Law**

Speaking about positivism MUI Fatwa into national law will never be separated from the existence theory ever conceived by Ichtijanto S. Because receipt MUI into national law as the case receives DSN is part of Islamic law into national law. In theory, Ichtijanto explained that the existence of Islamic law in the national law recognized its existence. The existence of Islamic law in the national law includes several aspects 1) as an integral part of national law. 2) recognized the independence, power, and authority by national law, and given the status of a national law. 3) function as a filter (filter) the national law. 4) as the main ingredient and the main elements for the formation of a national law.

Form of existence of Islamic law which continues in existence MUI fatwa as a source of national law is as follows; 1) an integral part of Indonesia's national laws. 2) the existence, independence, power, and authority recognized by national law, and given the status of a national law. 3) legal norms of Islam (MUI) serves as filter materials Indonesian national law. 4) as the main ingredient and the main elements of the Indonesian national law. The existence of a form of Islamic law, is the excess of the socio-juridical fact of existence of Islamic law in Indonesia if we review the records of the history of the Indonesian nation. Starting from the formulation Jakarta Charter "with the godhead base running duties for the adherents of Islamic law." Seven said the Jakarta Charter was changed in a broader sense in the national interest on August 18, 1945 was replaced by the editorial "Belief in God Almighty", the opening The following 1945 article 29 paragraph 1.

As a form of legitimacy theories applicability of Islamic law, that in fact many laws are a little more harmonize with Islamic law or as a matter MUI fatwa or legal norms, among others; Narcotics Act, terrorism law, intellectual property law, anti-pornography law, anti-corruption laws, etc.. There are also various forms of legislation which is intended only for Muslims. And it is a bit much results from positivisasi. Such legislation as follows: 1) Law Number 38 Year 1999 on Zakat. 2) Law No. 17 Year 1999 on Implementation of Hajj. 3) Act No. 10 of 1998 concerning Banking as a substitute for Law Number 7 of 1992. 4) of Law No. 41 Year 2004 on Waqf. 5) Act No. 3 of 2006 on the Amendment of Act No. 7 of 1989 on Religious Courts. 6) of Law No. 18 Year 2001 on special autonomy for Aceh Special Region. 7) Act No. 13 of 2008 on the Implementation of the haj pilgrimage in lieu of Law No. 17 of 1999. 8) Act No. 21 of 2008 on the Law of Islamic Banking. 9) of Law Number 19 Year 2008 on Securities.

The existence of the development of Islamic law in Indonesia, today, influenced also by the pattern of the relationship between religion and state is increasingly democratic. Democratic climate of course could not be found during the old order or new order. More stable position against the state religion, will support the process of internalization of religious law in constitutional practice.

Summa Amin explained that one of the indicators of the renewal of Islamic law in a modern Muslim country is, the role of ijthad for acceptance of Islamic law in the form of either a fatwa or ijthad in national law. According to Yeni Salma Barlenti Islamic fatwa is a legal product that has been structured by the institution itself MUI. MUI fatwa acceptance in the arena of national law can be seen from the two characters, first; acceptance by MUI fatwa normative text books which have adapted to the local culture of a country. The second is the acceptance of the MUI fatwa was dipositivisasi into the national law of the material substance alone. Of course in the process of receiving the much needed role of the mujtahid to provide academic legality, that the MUI fatwa should be structured and have socio-cultural dialectic with the Indonesian people, so it comes down to the birth of the national law. In terms of legal reform in theory hududnya

Shahrur, stating that the human being is to innovate *kebebabsan* fiqh to control their own lives by creating laws relevant to situations, age and condition yourself to remain in compliance with the signs of God (Yeni Salma Barlinti : 2010).

MUI fatwa is also expected to be responsive to what the needs of the Muslim community in Indonesia by considering the concepts offered by Shahrur, such as 1) making a public law jurisprudence formed with respect to such modern conceptions *konstitusionalisme*, pluralism, civil society, democracy and opposition. 2) make fiqh law that runs within the framework of the constitution. 3) make fiqh as positive law. According to experts, the positive law is the legal norms made by the state authorities. 4) make fiqh as the law is democratic, meaning that this theory is designed to realize the civil jurisprudence, in which the principles of civil society, such as freedom, equality, democracy, and uphold the high valued work of science. 5) make fiqh as a pluralistic and tolerant law. Indonesia is a pluralistic country in this context, the civil jurisprudence with one of its main pillars is to create tolerance between religious communities is something that is necessary so that the tolerance to the needs that can not be bargained with life for the realization of peace. 6) make a dynamic fiqh as law. 7) make legal fiqh as realistic. It thus reinforced by the statement that Science and though Menhein are Bound to location wrthin the structure and historical sicial process. Meaning can not *menyelaikan* problem of time, if the way the mufti gave fatwa merely recycle paper Salaf scholars without coupled with a critical reading of the writings of the Salaf.

### 3. Conclusions and Recommendations

#### a. conclusion

Based on the study in analyzing the problems in this topic further be concluded. After being awarded a solution of the problem.

1. Harmonization patterns of MUI Fatwa and national laws are harmonization pattern that patterned harmony similarity principle, principle and law characteristics between MUI and national law. such harmonization between the MUI fatwa on Terrorist Act, Bribery, Corruption and the Law on Pornography and Porno-action.

The third pattern is the harmonization of legislation form above also follows also the existence of Islamic law, Islamic law that is there in terms of norms of Islamic law (religion) serves as filter materials Indonesian national law. which includes the harmonization principle, the principle characteristic is the MUI fatwa law with national law.

Pattern of the study's findings in the realm of public law-penal law. So that the position of the MUI fatwa or Islamic law modeled *positifisasi* Islamic law into national law. MUI fatwa means and synergized substantive law rather than in formal meanings, literal and text. *Minimbang* *ijtihad* some theories and concepts, the patterns indicate the presence of such a fatwa legal reform in the context of *ijtihad maqasid al-Shari'ah* with *ijtihad tathbiqi* model or law enforcement context ness. *Ijtihad* which harmonize with the nature of the characteristics of Islamic law, namely; perfect / *takamul*, dynamic / *harakah*, harmony / *wasath*. Thus the MUI fatwa which harmonizes with the laws and regulations that have been in accordance with the principles and systems of Indonesia reflection of the state based on Pancasila state religion, not a theocracy or a secular system.

The findings of both the MUI fatwa *positifisasi* pattern with the Law on Zakat, Hajj, Endowments and Securities Islamization Sharia is the pattern of national law in the form of models *positifisasi* "civil theology". It means that there is a pattern Ahmadiyah Islamic law in the sense of independence that is recognized nationally and enforceable as domestic law.

2. MUI fatwa ideal projection into positive law in the Reform Era highly prospective. With the presence of Act No.. 12 Year 2011 on the Establishment Regulation Legislation in Indonesia involving progressive public. If the MUI Fatwa can internally reform law in the institution of Islamic law, both aspects of the methodology, reformulation, re-actualization and reinterpretation without compromising the values Qur'aniyah and *maqasid al-Syari'ah*, the aspect of objectivity-professionalism, and no government intervention projections and considering some pattern contextual fatwas such as: 1) MUI Fatwa responsive character. Ie fatwa results-oriented and goal by considering *mashlahah* and nationality issues. In the fatwa responsive, negotiated legal order and a dialogue, not won through subordination. So in this context, the MUI fatwa accommodating the problems of people prosecuted without losing its basic principles. If not, MUI fatwa will experience infertility and fossilized functions and abandoned by the ummah. 2) has the MUI Fatwa plural and tolerant character. When tolerance is one of the principles of civil society MUI → can not ignore aspects of plurality and tolerance sociological perspective-ness as one of the basic building joint fatwa. 3) MUI Fatwa has a dynamic character and contextual. In an effort to realize the MUI fatwa as one legal product that dynamic and contextual approaches or methodologies of Islamic law which is developed by considering the rules "*taghayyur al-hukmi taghayyur bi al-azmani wa al-amkinaat*". Then the MUI fatwa itself will be able to work together with national law in harmony and also can *kkonteks terpositifkan*. 4) Fatwa MUI has harmony with the constitution. The study of the relationship between Islam and the state, including the Islamic law or legislation *positifisasi* MUI fatwa towards court of law to have a strong foundation for several reasons. The reasons as to academic studies, namely: 1) legitimate reasons, that religion occupies a high position in Indonesia, as shown in the first principle of Pancasila and the 1945 Constitution in Article 29. 2) sociological reasons, the majority of Indonesia's population is Muslim, and Indonesia is one of the largest concentrations of Muslims in Indonesia, so Indonesia called Muslim countries. 3) academic reasons that Islamic law has affected positive law, especially in the field of family. MUI fatwa *positifisasi* ideal projection into national law *terpositifkan* consequence is the establishment of two institutions of law, firstly, the existence of its pattern of Islamic law in the sense of independence that is recognized nationally and enforceable as domestic law commonly entrusted to clerics fatwa institutions. Second, national laws are public-penal law is the responsibility and authority of the state to do the pattern unification with regard to legal doctrine and values of religions recognized by the existence of Pancasila and the 1945 Constitution.

## b. Recommendation

### Majelis Ulama Indonesia

In general the MUI fatwa is the field of private law or a small part of civil law or other law with a nuanced understanding *Ahwal Al-Syakhshiyah*. So that MUI has a strategic role in the conduct-konstitutif harmonization agenda and positifisasi Islamic law, then the MUI fatwa is directed to the following two patterns;

1. The first pattern, the MUI fatwa that "public-penal law" can be done with the character pattern MUI fatwa nationalization of Islamic law. MUI prevalent means contribute to the theological concepts, so that national law can synergize with Islamic law, both norms, principles, philosophy and prinsip as well as the characteristics of both the legal system. Pattern fatwa against "public penal law" character nationalization of Islamic law shall have the MUI fatwa as the mediating role of Islamic law and national law or lightening for both models with regard to the law of *maqasid al-Shari'ah*. And the modern legal order, such as constitutional, democracy, human rights, justice, humanity, tolerance etc.. As a consequence, that the state is the basic concept of Pancasila with religious nation state (religious nation-state) is not a theocracy or a secular state.
2. The second pattern, the fatwa besifat "civil theology" is done with the pattern of Islamisation of national law. It means that all state regulations concerning traffic peri-life Muslims internally. This pattern of Islamisation of national laws, common MUI-progressive take on the role of preventive and coordinative role for the joint organization Muhammadiyah, Nahdlatul Ulama and the Islamic Union (exactly) as well as religious organizations to synergize with the government in the process positifisasi safeguard the Islamic law "civil internal" to the national law. The fatwa positifisasi process commonly involves components that are competent, scientists, scholars, practitioners and politicians to respond to contemporary legal issues surrounding religious problem.

Evaluate product-Reform Era MUI Fatwa quite responsive compared to New Order who had serves as legitimator impression of the New Order government policy. MUI fatwa in the New Order period tends to serve the interests of the authorities or, *fatwa li al-hukumah*. At the Reformation Era-oriented MUI should maintain religious values and interests of the welfare state, *fatwa li khifdu mashalih wa al-din al-ummah wa li al-Daulah*.

### The Government and the House of Representatives of the Republic of Indonesia

Due to the nature of Law. 12 of 2011 which established a national law in order to make the progressive character, the zeal and juridical mandate of Law. 12 in 2011. Government and Parliament are legally obliged to hear input from the MUI, Muhammadiyah, Nahdlatul Ulama, EXACTLY, al-Ershad, etc. either verbally or in writing can be done through: 1) a hearing; b) working visits; 3) socialization; 4 ) seminars, workshops and / or discussion. To facilitate the public to follow a Bill (the Bill), then any draft regulation must arise, and regulations can be accessed easily by the people. Thus intended that the bill could lead to the formation of the formation of the national legal system that is responsive in accommodating the expectations of the law who live in the community to form a progressive law. The findings in this study hope to Government and Parliament as follows: 1) if the pattern of Islamisation of national laws as mentioned in the above results, the Parliament and the Government should involve socio-religious organizations such as religious organizations to get involved in the designing begin an academic paper against a bill until the bill is defined as an Act or a State may also establish legal institution that forms a kind of religious or MUI applicable and binding on adherents of those religions internally. 2) The pattern of nationalization of Islamic law, the Parliament and the Government actively involving all relevant elements, elements of all religions, religious organizations, academics, practitioners to create texts and concepts of the bill, if not included will result in the konplik values between legal systems recognized in Indonesian law

### Academics and Legal Research

For academics, both in the general legal environment, and the religious law and other researchers who focus on the study of objects MUI fatwa or Islamic law relation with Indonesian positive law, can use the results of this study to be used as library materials and discourse footing to conduct advanced research . See MUI fatwa has contributed widely to the formation of a national law which character Pancasila. Fore need to be pursued and cultivated further research to harmonize the three legal systems that live in Indonesia. Because at this point, still not synergy between the three legal systems it is well and complement each other in establishing the legal system of Pancasila.

What has been examined in this study is only a small part of the focus of the study of law, whereas the development and national legal challenge to the era of reform and democratization of the more open and dynamic. Particular study Islamic law would be more dynamic due to the influence of the swift currents of globalization, medernisasi and development of science and technology with various *domino* affect. Thus, the perspective of Islamic law in the MUI fatwa to always take a strategic roles enlightening. Seeing this phenomenon researchers recommend to legal academics to promote legal research object of study in a mutual symbiotic relationship between Islamic law and national law. In another aspect for scholars, so that in proportion to teach Islamic law to students S1, S2, and S3 in the faculties of law to be more comprehensively in the provision of adequate time and materials. Because betapun Indonesian state has a historical background, socio-cultural values that are different from Holland, America and middle east countries.

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- Law No. 38 Year 1999 on Zakat
- Law Number 13 Year 2008 concerning the organization of Hajj
- Law Number 19 Year 2008 concerning Sharia Securities
- Law No. 41 Year 2004 on Waqf.
- Law No. 7 of 2006 anti-corruption
- Law Number 15 Year 2003 on Anti-Terrorism
- Law Number 44 Year 2008 on Pornography and Porno-action.