

Position of fatwa in Islamic law: the effectiveness of MUI, NU, and Muhammadiyah fatwas

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Quantitatively, there is a gap between the number of limited religious texts and the enormous reality of dynamic context. Indeed, in the main principle of Islamic law, every activity carried out by a Muslim must comply with sharia rules. The *syara'* regulations are religious texts concerning words, actions, or other activities carried out by someone capable of law (*mukallaf*). To overcome the possible gap between the text and the context, the scholars (*ulama*) formulate various methods with the result that Islamic law can be a medium of connecting and an effective means of compromising religious texts with one's activities. With the production of these various methods, the production of texts that have ended since the death of the Prophet Muhammad \pm 1500 years ago will still have control and be able to guide humankind. This article discussed how fatwa, as scholars' thoughts, has a dialectic with society's reality. In addition, it also explored fatwas' practical level. In fact, fatwa is one of the efforts to find *syar'i* answers to various problems arising in human life, especially in modern times.

Teks-teks keagamaan yang secara kuantitatif jumlahnya terbatas, ketika dihadapkan dengan realitas konteks yang dinamis cenderung mengakibatkan adanya kesenjangan. Padahal, di dalam prinsip utama hukum Islam, setiap aktifitas yang dilakukan oleh seorang muslim harus bersesuaian dengan aturan syarak. Aturan syarak yang dimaksud adalah teks-teks keagamaan menyangkut perkataan, perbuatan, atau aktifitas lainnya yang dilakukan oleh seseorang yang cakap hukum (*mukallaf*). Untuk mengatasi kesenjangan yang sangat mungkin terjadi antara teks dan konteks, para ulama merumuskan berbagai metode agar hukum Islam bisa menjadi media menghubungkan dan sarana kompromi yang efektif atas teks-teks keagamaan di satu sisi, dengan aktifitas seseorang di sisi lain. Dengan dihasilkannya berbagai metode tersebut, produksi teks yang sudah berakhir sejak wafatnya rasul \pm 1500 tahun yang lalu akan tetap memiliki daya kontrol dan mampu menjadi *guidance* bagi umat manusia, kapan dan di

manapun. Artikel ini membahas bagaimana fatwa, sebagai sebuah produk pemikiran dari para ulama, berdialektika dengan realitas masyarakat, apakah fatwa tersebut diamalkan atau justru diabaikan. Padahal, fatwa merupakan salah satu ikhtiar untuk menemukan jawaban syar'i atas berbagai persoalan yang muncul dalam kehidupan umat manusia, khususnya di jaman modern.

Keywords: *Babtsul Masail Institution; Effectiveness of Fatwa; Fatwa Commission; Tarjih Council.*

Introduction

Sharia (Islamic law) has been the dominant moral and legal code in Muslim societies for most of their history. During the early centuries of Islam, Islamic law facilitated Muslims' growth and social development, culminating in the establishment of vast empires and extraordinary civilizations. However, towards the end of the fifth century of Islam, Islamic law began to lose its role as the guiding force that inspired Muslim creativity and ingenuity and fostered the growing spirit of the Muslim community (*ummah*) (Safi, 1990). Islamic law occupies a relatively small place in the legal systems of most Muslim-majority countries, with jurisdiction often limited to matters of family law (Moustafa and Sachs, 2018). Islamic law, often called *fiqh*, can be interpreted as knowledge of applicable Sharia laws and is extracted from detailed instructions (Mahfudz, 2003).

In discussing Islamic law, there are at least three products of legal thought apart from fatwas. They are *fiqh*, court decisions, and legislation. Here, *fiqh* is understood as the result of the *ijtihad* of scholars on legal events that have occurred or not (Effendi, 2009). If traced to the reasons, fatwas have a more specific scope than *ijtihad*. Meanwhile, court decisions, technically referred to as *al-qadha*, are utterances and/or written decisions issued by institutions with authority.

The study of fatwas in Islam is a normative Islamic law. Fatwas are included in the Islamic legal literature regulating, either in the form of fatwas issued individually or collectively. With the regulatory nature of the fatwa, there is a clash of normative religious and social areas, thus placing the study of fatwas in the study of the sociology of Islamic law in the sense that it is a study that discusses patterns of behavior and community interaction around Islamic law both as causes, responses, and impacts of the Islamic law (Mudzhar, 2012b).

The presence of fatwas has an essential position amid religious communities, considering that the Qur'an and as-Sunnah cannot be added or subtracted in quantity, while

the demands of the times are constantly increasing and always carry legal implications that are continually evolving. As a result, the phrase appears among Islamic jurists “*al-nuṣūṣ mutanābiyah wa al-waqāi’ ghairu mutanābiyah*” (the texts are stopped, while the events that occur cannot be prevented).

This inequality is the background of the *ulama* (scholars), individually and collectively, to continue to be creative (*ijtihād*) in formulating Islamic legal products, one of which is fatwas. The fatwa itself is expected to become an adjustment tool that can anticipate developments and social changes around it.

Fatwa is significantly strengthened by the demand for Islam to always be relevant to the times on the normative basis of religion which is not explained in a detailed form. He did not explain in detail the normative basis of religion, it turned out to be very relevant to the demands of Islamic law to have a dynamic dialectic with social changes in society (Amin, 2008). Because of that, it can be understood in the dictum of the Islamic law that “legal, technical and branch events may change and develop, but the soul and principles of the text will always be constant, permanent, stable and unchanging throughout time, no matter how the changes occur” (Diamil, 1999).

Regarding the change in society and its legal issues, many fatwa institutions have been born and developed in Indonesia, both by the government (state) and the community. The Indonesian *Ulama* Council (MUI) with its Fatwa Commission is a representation of the fatwa institution established by the government, while Nahdlatul Ulama with the Bahsul Masail Institution (LBM NU) and Muhammadiyah with its Tarjih Council (MTM) are two of the many fatwa institutions, formed by the community (non-government). All three institutions have the highest authority in formulating fatwa on Islamic law in Indonesia, although different *istinbat* methodologies and the segmentation of the people who receive the fatwa are also diverse. If the MUI Fatwa Commission segmentation is the Islamic community in general, then the NU Bahsul Masail Institute (LBM) is more oriented to the *nahdhiyyin* (NU community), and MTM is also oriented to the Muhammadiyah community.

The three fatwa institutions are productive Islamic law decision-making institutions and always accompany the process of Islamic law legislation in Indonesia. Since its establishment on July 26, 1975, through a complicated political process (Mudzhar, 1993),

MUI has made a sizeable contribution to Muslims in Indonesia with the decision of hundreds of fatwas formulated by several scholars in the MUI fatwa commission (Jamaa, 2018). The Muhammadiyah Tarjih Council was established according to the decision of the 16th Muhammadiyah congress in Pekalongan in 1927. It has also given birth to many fatwas. Likewise, LBM NU, since its establishment in 1989 through the results of the 28th NU congress in Yogyakarta, has also produced many fatwa formulations and decisions concerning various issues and areas of life (Zahro, 2004).

Interestingly, although NU and Muhammadiyah are the most prominent Islamic organizations in Indonesia and have law-making institutions for Muslims within the scope of their respective members, in terms of the ideals and effectiveness of a fatwa institution, the fatwa produced by LBM NU and MT Muhammadiyah seems to be less popular and less effective in society when compared to fatwa products from MUI. Regarding *jam'iyah*, MUI does not have a militant mass base like NU and Muhammadiyah.

Based on the above issue, this article tried to unravel how a fatwa is practiced or ignored by the public. At least through this article, it can be understood the reasons behind the practice or neglect of a fatwa and what efforts should be made so that every fatwa formulated by fatwa institutions can genuinely become a guide that can bring change to society.

Method

This study used a qualitative method to obtain in-depth data from the community's perspective. In addition, it was used to capture the informants' knowledge. The determination of informants was carried out purposively, and the researcher interpreted the results of the submitted data (Garna, 2009).

Data collection techniques in this study included interviews, questionnaires, and observing the general community, NU, and Muhammadiyah. The interview was chosen because it aimed to collect various information about the lives of actors in a community (Koentjaraningrat, 1991). In addition, the researchers also distributed questionnaires to the informants/respondents who had been determined in each community group, such as the general public, NU, and Muhammadiyah *jamaah*. Questionnaires were needed to obtain accurate, measurable, and structured information from the respondents.

This study's respondents were one hundred and fifty (150) people divided into fifty (50) NU *jamaah*, fifty (50) Muhammadiyah members, and fifty (50) non-NU or Muhammadiyah Muslims. For each of these fifty people, the researcher divided them into ten (10) organization boards, ten (10) religious leaders (Kiai, Imam of the Mosque/Mushalla), and thirty (30 people) general Moslems. The portion for the general community was increased because they were the main target of the formulated fatwa. When the fatwa is positioned as an answer to the question of Muslims, they are not administrators of mass organizations and Muslim leaders, but the general congregation whose level of accessibility to fatwas is not very good.

Data analysis used the model developed by Miles and Huberman (1992). Qualitative data analysis starts with data collection activities, data reduction, data presentation, and conclusions and/or verification. It can be understood that the combination of the qualitative data analysis sequence starts from selecting a problem, collecting data, reducing data, presenting data, analyzing data findings/results, and drawing conclusions (Miles and Huberman, 1992).

Understanding fatwa discourse in Islam

Fatwa discourse has always been an interesting topic to be discussed by Islamic scholars, especially in *Fiqh* and *Ushul Fiqh*. Various types of fatwas are concerned in them. Starting from the fatwa issued by a particular institution or assembly, the fatwa issued by an individual *mufti*, to the fatwa issued without being preceded by a question or request.

In Muslim-majority countries, it is common for fatwas to become a government tool to legalize specific policies (Mudzhar, 1992). In Saudi Arabia, for example, the orientation of ulama towards religion-politics and symbiosis with the ruling authority has been identified since 1744. (Kechichian, 1986). Likewise, fatwas have also been used as an instrument of Islamization of the Bedouins in Jordan (Layish, 1991). In other Muslim-majority countries such as Malaysia, fatwas have an essential role in disseminating and socializing Islamic law in society. Fatwa is one of the primary forms of Islamic law in Malaysia. The fatwa institution is considered the most authoritative institution. The rules decided by the fatwa are disseminated through various media, including official websites, seminars, pamphlets

and books, court decisions, and so on. This shows fatwas' importance in spreading Islamic law (Khairuldin, Anas and Embong, 2018).

In Muslim-minority countries, fatwas often position themselves as a flexible and elastic compromise tool vis a vis policy of domination. What was stated by Basheer M. Nafi regarding the issuance of a fatwa signed by five Muslim scholars and scholars regarding the permissibility of American Muslim soldiers to participate in fighting terrorism in Afghanistan and other Muslim countries around the world after the September 11, 2001 bombings. That fatwa, according to Nafi, is an example of the perfect adjustment of American Muslims in the context of citizenship.

In the treasures of Islamic thought, the fatwa is literally interpreted as an answer to an event (providing a firm response to all events that occur in society) (Qardawi, 1997). Some scholars interpret the fatwa as a straight path (Fatah, 2006).

The etymological meaning of the fatwa seems to refer to three keywords in the Qur'an which form the concept of a fatwa in terminology, namely: *yas'alunaka* (they ask you), *yastaftunaka* (they ask for your opinion), and in some cases there is the word *afiiinaa* (give us a solution of this or that problem). From these three keywords, experts formulate the concept of the fatwa.

According to Hallaq, the term *istifta'* and all its derivations contain the meaning of a request to solve a complicated problem (Hallaq, 1994). In Surah Yusuf (12): 43, the king asked the people to interpret (*afiiini fi*) a profound dream he had. Queen Balqis also requested his officials' opinions (*afiiini fi*) when Prophet Sulaiman invited him to convert to Islam. The same connotation is also found in the legal verses, which revolve around women's rights and the complex inheritance case. So in the perspective of the Qur'an, the existence of fatwas and *iftā'* is linguistically justified in the Qur'an with various different expressions that have the same connotation, which leads to problems that are considered very complicated and need to be solved as early as possible.

According to al-Raqhib al-Isfahani, although the term fatwa is found in the Qur'an in different derivations, it actually has the same meaning; namely, the answer to legal questions often asked of the Prophet at that time (Fu'ad and Abdul-Baqi, 1981). Judging from the answers in the Qur'an, the fatwa requesters at that time tended to be factual and realistic so that the answers used clear language and answered the problem.

In *Usul Fiqh*, fatwa means an opinion put forward by a *mujtahid* or *faqih* in response to a request for a fatwa in a non-binding case (Dahlan, 1996). A fatwa can also be translated as advice, advice, and answers to questions related to the law (Depdikbud, 1997).

Meanwhile, a fatwa is an explanation of *syara'* about a problem to a person or group's question. According to al-Syatibi, fatwas in the sense of *al-iftā'* are information about *syara'* law that is not binding to be followed (Zuhaily, 1990). Al-Qardāwi defines a fatwa by explaining the *syara'* rule in the matter as an answer to the questions posed by the fatwa requester (*mustafti*) both individually and collectively (Qardawi, 1990). Meanwhile, Joseph Schacht termed the fatwa "*formal legal opini*" (formal legal opinion) (Schacht, 1965).

Alexandre Caeiro said fatwas are the meeting point between legal theory and social practice (Caeiro, 2006). According to him, socially fatwas have four functions, namely: fatwas as legal instruments, social instruments, political discourse, and legal doctrines (Caeiro, 2006). In its function as a legal instrument, fatwas are part of the judicial process when it comes to issues raised by a judge and have an impact on judicial cases. have a harmonious relationship within the government, fatwas as political discourse and legal doctrine appear for example when fatwas are used to give legal status to certain Muslim communities as "heretic" or "apostate".

According to Caeiro, *iftā'* as the essence of the Islamic tradition is not only understood as a "cognitive framework (theoretical)" but also as a practical form of a way of life, namely a technique to teach someone and form a mindset to achieve virtues and values that have been justified by religion. As Sermon and several other Muslim scientists have stated, fatwas are not only an instrument for learning about rules and procedures but also a tool for shaping the emotions needed to form a perfect Muslim (Caeiro, 2006).

One of the conditions for setting a fatwa is that it must meet the methodology (*manhaj*) in giving a fatwa because setting a fatwa without heeding the *manhaj* is prohibited by religion. Establishing a fatwa based solely on necessity (*li al-hājah*), because of the benefit (*li al-maṣlahah*), or because of the essence of religious teachings (*li maqāṣid al-syari'ah*) without adhering to *al-nuṣuṣ al-syar'iyah* belongs to the excessive group (*ifrāṭi*) (Caeiro, 2006). On the other hand, rigid groups hold religious texts (*al-nuṣuṣ al-syari'iyah*) without paying attention to the benefit (*li al-maṣlahah*), and the essence of religious teachings (*li maqāṣid al-syari'ah*) causing

failure to solve many problems. That group is included in the rash category (*tajrīti*). Therefore, one must maintain a balance in using *manhaj* agreed by the scholars in order not to fall into the category of giving a fatwa without considering clear legal arguments.

In terms of form and actors, fatwas can be divided into 2 (two), namely: collective fatwas (*al-fatwā al-ijmā'i*) and personal fatwas (*al-fatwā al-fardī*). A collective fatwa is formulated and determined by an authorized group or institution. It must be free from developing political, cultural, and social influences (Hasballah, 1976). In Indonesia, the collective fatwa groups are the Indonesian *Ulama* Council, Muhammadiyah Tarjih Council, Bahsul Masail NU, Fatwa Commission of the Indonesian Islamic Da'wah Council, and others (Fatah, 2006).

Some circles say that the collective fatwa is seen as a form of modern *ijtihad* that is considered ideal because the formulation process is based on various scientific viewpoints closer to the truth (Jaya, 1996). Collective *ijtihad* is believed to be effective in solving various contemporary problems that are very complex and require multiple perspectives by involving various experts from various disciplines (Jaya, 1996).

The personal fatwa (*al-fatwā al-fard*) is a form of fatwa that results from research and study carried out by someone. Usually, this personal fatwa gives more color to the collective fatwa. Personal fatwas are always based on an in-depth analysis of a problem that will be issued a fatwa. Generally, a collective fatwa begins with a personal fatwa through an in-depth study (Jaya, 1996).

In the discourse and practice of *fiqh* in Muslim societies, personal fatwas seem more prevalent than collective fatwas. More Muslim communities, for example, refer to the fatwas of Shaykh Muhammad Shaltut, Yusuf al-Qaradawi, Ibn Taimiyah, Shaykh al-Maraghi, Muhammad Abduh, Muhammad Abu Zahrah, Rashid Rida, or others (Jaya, 1996). In Indonesia, personal fatwas can be referred to the codification of fatwas from Sirajudin Abbas, A. Hasan, Qurays Shihab, Ali Yafi, Sahal Mahfudz, Hasbie as-Shiddiqy, or others (Rusli, 2011).

Responses to MUI, NU, and Muhammadiyah fatwas

There are several questions that the author asked the respondents to find out whether the fatwa from MUI, NU, or Muhammadiyah was really implemented or ignored by the community. The level of popularity of fatwas from each institution can also be known

from the answers given by respondents to the author's questions.

The number of respondents in this study was one hundred and fifty, divided into fifty NU *jama'ah*, fifty Muhammadiyah members, and fifty non-NU and non-Muhammadiyah Muslims. For each of these fifty people, the author divided them into ten members of mass organizations, ten religious leaders (*kiai*, Imam of the Mosque), and thirty general Muslims. The portion for the general Muslims increased because they are the main target of the formulated fatwa. When the fatwa is positioned as an answer to the question of Muslims, then the Muslims are, of course, those who are not administrators of mass organizations and Muslim leaders, but the general Muslims whose level of accessibility to fatwas is not very good.

Based on the answers from the respondents, the following data were obtained:

a. Popularity and adherence level on LBM NU Fatwa

Based on the answers given by the respondents, the popularity of LBM NU tends to be good at the level of organization leaders and religious leaders. As for the general public, most of them are unaware of the existence of LBM NU. In fact, at the level of religious leaders, some of the answers indicate that they are only aware of the institution's existence but cannot explain its duties and functions correctly. In terms of fatwa practice, because the public knowledge of LBM NU and its fatwa products is not good, the practical level in the community is also low.

b. Popularity and adherence level on the Tarjih Council Fatwa

The popularity of the Muhammadiyah Tarjih Council among its congregations is relatively better compared to LBM NU among Nahdhiyyin residents. At the organizational management level, all respondents knew and could explain the existence of the Tarjih Council. Their religious activities also entirely refer to the Tarjih Decision Book. The condition of the Muhammadiyah religious leaders is also better than that of the Nahdhiyyin religious leaders. Of the 10 religious leaders who were asked, only 2 could not properly explain what the Tarjih Council was. However, all respondents knew about the existence of the Tarjih Council in the organizational structure of Muhammadiyah.

Regarding religion, all respondents also answered that they fully refer to the

Muhammadiyah Tarjih Decision Association. As for the general public from the Muhammadiyah congregation, 5 respondents could not correctly explain the Tarjih Council, even though they knew its existence. Regarding the practice of fatwas, out of 30 respondents, only 4 admitted that their religious concept mostly came from recitations or lectures by *ustadz/kiai*. While the other 4 respondents stated that they preferred the Tarjih Decision book.

c. Popularity and adherence level on the MUI Fatwa Commission

The Fatwa Commission of the Indonesian *Ulama* Council as a government-owned fatwa institution, ideally has higher popularity than the former fatwa institution. It means, in terms of popularity, there are no more people who do not know the existence of the Fatwa Commission and its duties and functions. Likewise, every fatwa product produced by the Fatwa Commission must truly become a way of life for Muslims as a nation, state, and religion.

The ideals of the fatwa commission do not seem to align with society's reality. From the data obtained, the popularity of the Fatwa Commission seems to be inferior to the popularity of the MUI itself. In fact, the Tarjih Council for Muhammadiyah members' popularity is better than the MUI Fatwa Commission's.

The Fatwa Commission's popularity is relatively high compared to the Tarjih Council and LBM NU. This happens when the respondent is outside the congregation of the fatwa institution. This means that respondents from Muhammadiyah and NU are quite familiar with the existence of the Fatwa Commission compared to NU respondents and non-affiliated Muslims regarding the Tarjih Council. Similarly, respondents from Muhammadiyah and non-affiliated Muslim organizations get to know LBM NU

The theory of fatwa explains that there is no obligation for Muslims to follow a fatwa, except in matters that are agreed upon by all fatwa institutions, and there are no scholars (individually) who have different opinions. However, in conditions where the community has several institutions, and often each institution does not have one legal view to serve as a fatwa, the fatwa's practice certainly depends on each Muslim's tendencies. For example, in determining the start of Ramadan, in Indonesia, different fatwas often appear between one fatwa institution and another. In fact, even though the Ministry of Religion has facilitated

the holding of an *itsbat* meeting to determine the beginning of Ramadan, in practice in the field, there are still differences between fatwa institutions that rely on the reckoning method and fatwa institutions that continue to use the *ru'yab* method. The public is also not forced to follow the decisions of the *itsbat* trial, which in many cases constitutes the majority vote of Islamic mass organizations in Indonesia. The government still allows Muslims to choose which fatwa is believed to be correct, with a note not blaming Muslims for following other fatwas and always maintaining *ukhwwah Islamiyyah*.

Another example is the fatwa regarding the prohibition of smoking issued by the Muhammadiyah Tarjih Council. Among the members of the Muhammadiyah, this fatwa has not yet been fully implemented. Several respondents provided data that in everyday life there are still Muhammadiyah residents who smoke, even though they know that smoking is forbidden based on the decision of the Muhammadiyah Tarjih Council. However, the number of those who smoke before and after the issuance of the haram fatwa from the Tarjih Council has decreased significantly. The fatwa on the prohibition of smoking certainly has no effect on NU residents, where smoking is only considered *makruh* by LBM NU. This means that the issuance of a fatwa that forbidden to smoke from the Tarjih Muhammadiyah Council has absolutely no impact on the number of smokers in NU. Even if there are NU residents who stop smoking after the issuance of the haram fatwa, their reason for quitting is not at all related to the smoking ban.

Based on the data above, the problem of ignoring fatwas from fatwa institutions by the public seems to be caused by several things, namely:

1. The non-binding nature of the fatwa

In the discourse of Islamic law, fatwas are recognized as having a high position. The existence of a fatwa is seen as an alternative that can break the ice in the development of Islamic law. Especially when faced with the fact that every rule of Islamic law must not contradict religious arguments, while the religious arguments do not increase in number, and the problems faced by Muslims are continually growing and increasing in complexity.

One unique thing about a fatwa is that it is not a dogma or norm with a strong binding force like legal norms in general. The position of a fatwa in Islam is essentially

nothing more than advice or an answer to a legal question that comes from an individual scholar or fatwa institution. In other words, the fatwa is *ghairu mulzim* (not binding), the freedom of Muslims to follow it (Shihab, 1999).

Fatwa is different from *qadba'*. Fatwas have no binding force, and it may be followed or abandoned, even by the applicant himself. While *qadba'* produce binding legal rules. The *qadba'* institution is one of the instruments of power in the judicial sector, while the fatwa institution is nothing but an independent academic institution and is not affiliated with any political power, including the state.

In this context, it is interesting that although the MUI Fatwa Commission is perceived as "owned" by the government as a fatwa institution, its existence is still different from the Religious Courts, which are also owned by the government. The primary difference between the decision of the MUI fatwa and the Religious Courts is that there is no binding power in the fatwa as contained in the court decision. When the requester for a fatwa ignores the answer to his request for a fatwa, then he will not receive any legal consequences. In this context, whether or not to apply the fatwa results seems to be an ethical domain, not a juridical one. The fatwa requester who ignores the answer to the fatwa has ethically made a mistake, even though he cannot be legally blamed.

2. The diversity of fatwas

In addition to the lack of binding power, the existence of many fatwa institutions and religious leaders (*ulama*) who are often asked for personal fatwas, has led to the emergence of a plurality of fatwas in society. In certain contexts, the diversity of fatwas does not cause serious problems in society, but under different conditions, conflicts can occur. For example, several MUIs in East Java issued a heretical fatwa against Shia groups and urged the central MUI to give the same fatwa. In a different position, NU and Muhammadiyah oppose the birth of the deviant fatwa because they are vulnerable to being used as a legitimacy tool by certain groups to oppress the Shia community in Indonesia (Tempo, 2018). This concern of NU and Muhammadiyah is proven by the occurrence of percussion and expulsion of the Shia community in Madura under the pretext of a heretical fatwa from the MUI (Detik.com, 2018).

The difference in fatwa products between one fatwa institution and another shows

that fatwa is dynamic. Apart from differences in legal methodology, the differences was also caused by the position of the fatwa as a response to new developments faced by the people asking for the fatwa and society in general (Amin, 2011).

3. Weak socialization

As a legal opinion, fatwas have a relative truth value (*dzanni*). The fatwa may contain the value of truth as well as the value of error. Especially if the fatwa concerns issues that are not clearly mentioned (*sharih*) by the Qur'an or al-Sunnah. However, regarding the strength of the truth offered, a fatwa originating from a fatwa institution is seen as having a stronger truth value than a fatwa from a *mufti* (Syarifuddin, 1997).

The substantial value of truth given by collective fatwas such as MUI Fatwa Commission, Muhammadiyah Tarjih Council, and LBM NU ideally can be used as guidelines for Muslims to live a religious, national, and state life. For this reason, every fatwa produced by each of these institutions must be known by Muslims to be put into practice. There must be an effort to reach out to the community so it can be learned and understood.

In society, the facts show different things where the socialization process does not seem to be going well, so most of them do not know the fatwas of each fatwa institution. People are more familiar with fatwas from preachers, *kiai*, or *ulama*, who are often asked for religious opinions on various issues. The public seems to ignore the strength and weakness of the truth offered by individual and collective *muftis* as described above.

Fatwa in empirical Islamic Law discourse

In socio-religious life, the position of fatwas is significant, so religious authority in a society can be formed through fatwas (Kaptein, 2004). In some areas, the words of an *ulama* are still very influential in the Muslim community's life more than a leader's words. On this basis, President Suharto initiated the establishment of MUI, apart from being a unifier of the people who were divided by the ideologies of each mass organization, and form of government awareness that the problems faced by the Indonesian people would be difficult to solve without involving the participation of the *ulama* (Niam, 2008).

The government's intervention in MUI indeed, in many ways, made it difficult for the MUI to be genuinely independent of the will and interests of the authorities. In this case, the MUI is often in a position as a legitimator for government policies, which will undoubtedly affect the MUI fatwas. This condition further strengthens the thesis that social and cultural influences cannot be ignored in every fatwa product from a person or fatwa institution (Mudzhar, 2012a).

At the practical level, fatwas mark the relationship between sharia (Islamic law) and the concrete world of humans. Fatwas also become a kind of meeting point between law and reality. Fatwa is not an answer to an imaginative question made up by the *mufti* (Mudzhar, 2012a) but a product of a society's concrete and certain reality. Several indicators can be used to explain this. *First*, every conventional fatwa begins with a question from the *mustafti*, followed by an answer from the *mufti*; *Second*, almost all fatwas are closely related to individuals or groups in certain conditions and places; *Third*, fatwas are often given to answer less relevant questions, but even so, the fatwa comes from the real world; *Finally*, many fatwas are in response to disputes over a particular type of contract. The existence of disagreement marks a phenomenon of events between two or more people in conflict (Hallaq, 1994).

Based on some of the indicators above, it is clear that fatwas do not only function as a reference source for religious guidance in dealing with various problems of daily life. However, a fatwa or a collection of fatwas can also be a historical record that marks the social history of a society at a certain time. In this case, the fatwa does not only contain an explanation of religious law regarding a problem. In formulating fatwa, there is a dialogue among people on their time's issues manifested in the questions asked (*istiftā'*) and then answered by *mufti* as his responses. This is where the fatwa is a record of certain people's social situations at a certain time (Anwar, 2007).

It is undeniable that a *mufti* or a fatwa institution always has certain ideological interests or tendencies in viewing a problem or phenomenon. On this basis, Syamsul Anwar said that the fatwa is a bridge between the ideals of sharia on the one hand and the concrete reality of society on the other. The problems, concerns, hopes, aspirations, and experiences of the community are raised and confronted to find common ground with the moral and ethical-religious ideals of religion in sharia mediated by the intellectual skills and *ijtihad*

of the mufti. In giving his response, the *mufti* did not depart from a vacuum. He has aspirations, views, hopes, and interests and may even be under pressure from political, social, economic, and cultural restrictions.

Thus the fatwa as a whole is actually a struggle in a broad dimension. It carries a variety of missions and includes social criticism, defense of the status quo, support or otherwise resistance to the regime in power, carrying out religious purification and social reform, as well as enlightening the community and even fueling the fighting spirit against the colonialists as in the era of colonialism (Kaptein, 2004).

Unlike the fatwa institution owned by MUI, LBM NU and the Muhammadiyah Tarjih Council seem to be free from interference from the authorities in their establishment. Before MUI was established, both had been found and carried out their roles professionally as fatwa institutions with their respective methods and procedures. However, neither the LBM NU nor the Tarjih Muhammadiyah Council exists in a social or cultural vacuum.

In terms of characteristics, the three fatwa institutions have similarities and differences. All three have in common that each is a collective fatwa institution (*jama'î*), which in Indonesia began to develop in the early 20th century. The appearance of the three at the same time shifts the popularity of individual fatwas (*fardiy*) from the scholars of the archipelago (Kaptein, 2004).

On the other hand, there is a significant difference between the three. The first significance is that LBM, a fatwa institution owned by the NU “traditional” religious organization, develops the principle of *taqlid* in its legal *istinbat*. A figure is very influential in formulating a fatwa in LBM. Second, the Tarjih Council, as a fatwa institution owned by the “modernist” Muhammadiyah organization, developed the principles of modernist legal *istinbat* based on text (not on figures) and prioritized the principle of *ijtihad*. Third, it differs from the two fatwa institutions previously described (LBM and Majelis Tarjih), whose establishment process is far from government intervention, MUI actually exists or stands on the government’s initiative. As for the legal *istinbat* method, the model developed by MUI seems to be the most comprehensive because it combines what was developed by LBM and the MT. This is because the members of the MUI Fatwa Commission are representatives of various religious organizations in Indonesia, including NU and Muhammadiyah. Lastly,

the authority to formulate fatwas in N. and MUI is not only the authority of the central management but also the authority of regional administrators. As for the Muhammadiyah, the authority to formulate a fatwa is only in the hands of the central board. From the plurality of fatwas produced, the regulations implemented by Muhammadiyah seem to be able to avoid the plurality of fatwas internally. As for NU and MUI, it is very possible that internally there will be a plurality of fatwas, especially the fatwas of the central and regional board.

Although they have different characters and models of *istinbat*, in their development, fatwas from fatwa institutions are believed to be the best and most scientifically accountable. This is based on at least two things: *first*, the accumulation of religious authority (*ulama*) in collective fatwas. For some Indonesian Muslims, fatwas given through a process involving more experts have higher authority. *Second*, collective *ijtihad* is considered the best form of *ijtihad* today as a process for realizing a collective fatwa. Collective *ijtihad* is a solution to the crisis of thought that hit the Islamic world. The complexity of the existing problems demands to be resolved by involving not only Islamic experts but also experts in other scientific disciplines.

In practice, the ideal that the fatwa produced by the institutions described above does not have to be adequately realized. It means that if a fatwa from an institution is considered better than a fatwa from an individual, many still rely on the opinion of a Kiai, scholars, or experts on various religious issues. In addition, when the MUI Fatwa Commission involves fatwa experts across religious organizations, the fatwa's power level should be better than the fatwa from each mass organization. In fact, some mass organizations still choose to implement their own fatwas rather than the fatwa from MUI.

Conclusion

Based on the data analysis, it can be concluded that the effectiveness of the fatwa produced by the MUI Fatwa Commission, LBM NU, and the Muhammadiyah Tarjih Council has not been maximally socialized and implemented by the general public. No binding and coercive power is attached to the fatwa produced. On the other hand, the diversity of fatwas is also one of the reasons the fatwa's effectiveness is not too high for the general public. Finally, the cause of the effectiveness of fatwas produced by fatwa institutions is the lack of direct

socialization with the public, so many people do not know about certain fatwas. This is undoubtedly a separate input for fatwa-making institutions, considering that fatwas are essential for people's lives, especially the Muslim community. On the other hand, the fatwas produced by several fatwa institutions are also complementary.

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