

## **Fatwa Authority of the Indonesian Ulema Council on the Formation of Religious Regulations in Indonesia; *Siyāsah Dustūriyah* Perspective**

**Aswan<sup>1\*</sup>, Abdul Hayyaqdhah Ashufah<sup>2</sup>**

<sup>1</sup>Universitas Islam Negeri Alauddin Makassar, Indonesia. E-mail: [aswansaff212@gmail.com](mailto:aswansaff212@gmail.com)

<sup>2</sup>Universitas Sidi Mohamed Ben Abdellah, Morocco. E-mail: [ashufah.abdulhayyaqdhah@usmba.ac.ma](mailto:ashufah.abdulhayyaqdhah@usmba.ac.ma)

\*Corresponding Author

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### **Abstract**

This study aims to determine the urgency of MUI fatwas in people's lives and the position of MUI fatwas in the formation of government policies in Indonesia as well as to analyze the formation of government policies on the influence of MUI fatwas studied in *Siyāsah Dustūriyah*'s view. The problem in this study is the authority of MUI fatwas in influencing legal politics in Indonesia while the procedure for forming MUI fatwas is not regulated in Law Number 12 of 2011 concerning the Establishment of Laws and Regulations. This research is a library research with a *syar'i* normative theological approach. Primary and secondary data sources such as: UUD, MUI Fatwa, al-Qur'an, hadith, scientific journals. The results of this study are 1) The urgency of MUI fatwas in people's lives as a guide in finding solutions related to problems using a systematic methodology based on strong propositions for the benefit of the general public, especially Muslims. 2) MUI's fatwa in its position on policy formation is an infra-structural element in the group of institutional interest groups (Institutional Interest Group). 3) MUI fatwas are regulations and laws required by the state in terms of conformity with religious principles and are the realization of community benefit. So that the MUI fatwa is present to assist the government in solving a problem in society, especially Muslims called the *ifta* institution.

**Keywords:** Fatwa MUI; Government policy; *Siyāsah Dustūriyah*

### **Abstrak**

Penelitian ini bertujuan untuk mengetahui urgensi fatwa MUI dalam kehidupan masyarakat dan kedudukan Fatwa MUI dalam pembentukan kebijakan pemerintah di Indonesia serta untuk menganalisis pembentukan kebijakan pemerintah terhadap pengaruh fatwa MUI yang di telaah dalam pandangan *Siyāsah Dustūriyah*. Permasalahan dalam penelitian ini yakni otoritas fatwa MUI dalam mempengaruhi politik hukum di Indonesia sedangkan prosedur pembentukan fatwa MUI tidak diatur di dalam Undang-Undang Nomor 12 Tahun 2011 tentang Pembentukan Peraturan Perundang-Undangan. Penelitian ini merupakan penelitian kepustakaan (library research) dengan pendekatan teologi normatif *syar'i*. Sumber data primer dan sekunder seperti : UUD, Fatwa MUI, al-Qur'an, hadist, jurnal ilmiah. Hasil dari penelitian ini adalah 1) Urgensi fatwa MUI dalam kehidupan masyarakat sebagai bimbingan dalam menemukan jalan keluar terkait permasalahan dengan menggunakan metodologi yang sistematis berdasarkan dalil-dalil yang kuat demi kemaslahatan masyarakat umum khususnya umat Islam. 2) Fatwa MUI dalam kedudukannya terhadap pembentukan kebijakan merupakan unsur infra struktur yang berada dalam golongan kelompok kepentingan institusional (Interest Group Instittusal). 3) Fatwa

MUI merupakan pengaturan dan perundang-undangan yang dituntut oleh keadaan suatu kenegaraan dari segi persesuaian dengan prinsip-prinsip agama dan merupakan realisasi kemaslahatan masyarakat. Sehingga fatwa MUI hadir untuk membantu pemerintah dalam menyelesaikan suatu masalah dalam masyarakat khususnya umat Islam yang disebut lembaga ifta'.

**Kata kunci:** Fatwa MUI; Kebijakan; Siyasah Dusturiyah

## 1. Introduction

Indonesia is a state governed by law; therefore, as a legal state, all aspects of national and societal life must be based on and conducted in accordance with existing legal provisions to ensure the country operates in an orderly and secure manner (Suharto, 2020). One of the pillars of Indonesia's strong legal framework is legislation. Laws in Indonesia serve as the legal foundation for all aspects of state life, as is the case in other countries (Adha, 2020). The significant role of legislation is as a vital instrument for state administration, which concerns efforts to regulate societal life in the interest of order and governance to achieve the welfare of the people (Kristianti, 2021). Consequently, the formation of laws must conform to legal provisions and reflect the aspirations of society toward the ideals of a just and prosperous nation (Rafiqi, 2024). Following the reform era, there has been a notable emergence of regional regulations based on Islamic *shari'at* law.

The Indonesian society is deeply religious, placing religion as a fundamental guide for national and societal life (Umar, 2019). Islam, as the majority religion in Indonesia, has become deeply rooted across various aspects of life. The formation of numerous Islamic organizations in Indonesia is closely linked to the sociology of religious society (Najib, 2020). Charles Kimball observes religion as the most enduring and pervasive force on earth. Throughout history, religious ideas and commitments have inspired individuals and faith communities to transcend narrow personal interests in pursuit of higher values and truths (Husni, 2018). Historical records frequently illustrate that compassion, self-sacrifice, and noble service to others are often grounded in strongly held religious convictions.

The establishment of the Indonesian Ulema Council (Majelis Ulama Indonesia, MUI) was also a government effort at the time to integrate religious scholars into the bureaucratic system (Fikriawan, 2018). MUI was founded on July 26, 1975, in Jakarta during the First National Conference of Indonesian Ulama, held from July 21 to 27, 1975, at the Senayan Conference Hall. President Soeharto articulated two main reasons for its formation: first, the government's desire to unify the Muslim community, and second, the recognition that many national problems could not be resolved without the participation of the ulama. Beyond these normative reasons, political interests appeared to be more dominant. President Soeharto was well aware of the significant position of the ulama within Indonesian society and sought to incorporate them into his political agenda.

The influence of fatwas issued by the MUI on Indonesian political behavior has been substantial. After the issuance of MUI fatwas, government political policies often appeared

to follow the content of these fatwas, despite the fact that fatwas themselves do not possess binding legal authority. This phenomenon illustrates that the fatwa institution—and specifically the MUI—holds considerable sway over the Indonesian government, almost akin to a state institution when issuing decisions or political policies. However, upon closer examination, the MUI is not a state institution comparable to bodies such as the People's Consultative Assembly (MPR) or the House of Representatives (DPR), nor does it belong within the classical trias politica framework articulated by Montesquieu.

From 1975 until the early 1990s, the primary function of the MUI was to support and, in some cases, justify government policies and programs. This role persisted until the end of the New Order regime and the beginning of the Reform era in May 1998, a period that brought significant and fundamental changes to Indonesia's political and social life. During this time, MUI fatwas became akin to legal foundations followed not only by society but also by political actors within the government. The position of the MUI, if observed closely, resembles that of a state institution; when it issues a decision, society tends to automatically comply with the fatwa's directives.

## **2. Research Methods**

The type of research employed in this study is library research, which emphasizes information sources such as legislation, legal books, journals, and literature relevant to the object of study. This research uses a normative *syar'i* theological approach. The data sources consist of primary, secondary, and tertiary data. Data collection is conducted through literature review, including reading materials such as the 1945 Constitution (UUD 1945), court rulings, the Qur'an, scholarly works, legal academics' writings, legal dictionaries, opinions, and magazines. The data analysis technique applied involves qualitative methods. After collecting data, the researcher processes it using inductive reasoning (processing data from specific to general), deductive reasoning (processing data from general to specific), and comparative thinking, which compares one expert opinion with others. The data processing techniques include: Data Identification: Recognizing and grouping data that align with the research title and are relevant to the subject matter. Data Reduction: Selecting and filtering information pertinent to the discussion so that both the researcher and readers can clearly understand the purpose of this study.

## **3. Discussion**

### **3.1. The Urgency of the Indonesian Ulema Council (MUI) Fatwas in Indonesian Society**

The advent of Islam as a complete religion has brought profound impacts, not only in improving human faith (aqidah) and morality (akhlak), but also in shaping social, political, and even governmental structures within society (Rahmawati et al., 2022). The urgency of the fatwas issued by the Indonesian Ulema Council (Majelis Ulama Indonesia, MUI) within the framework of the state should not be understood merely from a legal perspective; rather, it

must be considered within the broader social context, which includes justice, order, and social peace as the ultimate goals of law. Although MUI fatwas do not constitute positive law with binding legal force, the state cannot simply abdicate its responsibility to uphold justice and social order, especially when religious beliefs become disorderly, potentially causing conflicts that threaten social harmony and peace.

In Islamic constitutional governance, discrimination in the legal field is strictly prohibited (Rohman, 2021). Every individual holds an equal position regardless of social status. The state must guarantee that every citizen feels secure and comfortable in practicing their religious beliefs (Daming & Evita Jumiati Al Barokah, 2022). Moreover, the state should not regard religious affairs as matters confined solely to private or worship spaces, excluding them from public and political domains. Religious practice inevitably intersects with public life, which makes the state's role vital within the framework of a rule of law based on Pancasila to maintain order and justice.

Islamic law aims fundamentally to protect human welfare (*maslahah*), and on a broader scale, the welfare of society as a whole (Ariani et al., 2021). The general basis for issuing fatwas by the MUI is grounded on the strongest and most beneficial evidences (*al-adillah al-ahkam*) that serve the interests of the Muslim community. These evidences include the Qur'an, Hadith, consensus (*ijma'*), analogical reasoning (*qiyas*), and other juridical proofs. The procedure for issuing fatwas follows established stages and steps. Furthermore, the MUI holds the authority to issue fatwas concerning general religious matters that affect the Indonesian Muslim community nationally, as well as Islamic issues in regional contexts that might have broader implications beyond their locality (Hasyim, 2019). The process of determining a fatwa generally involves three components: the legal basis for issuing the fatwa, the procedural mechanism, and the organizational authority in issuing fatwas.

Indonesian scholars (*ulama*) are acutely aware of their roles as the inheritors of the Prophets (*waratsat al-anbiya*), servants of the community (*khadim al-ummah*), and successors to the mission entrusted to the Prophet Muhammad (peace be upon him). The judicial nature inherited from the Prophet essentially embodies justice, certainty, and a judicial process characterized by ease, speed, and absence of cost. Thus, the *ulama* are continuously called upon to fulfill historical roles—from the colonial era, through the independence movement, and across all stages of national development—by utilizing their potential and virtuous efforts to realize a just and prosperous society blessed by Allah SWT.

The promptness and accuracy of the *ulama's* responses in issuing fatwas to address emerging social issues demonstrate their commitment to resolving community problems. To find appropriate solutions, the *ulama* engage in rigorous legal exploration by applying systematic methodologies and clear, consistent, and responsible theories grounded in strong evidences. The issuance of fatwas concretely manifests the teachings of Islam, as evidenced by their foundation on the primary Islamic legal sources: the Qur'an and Sunnah. Moreover,

the emergence of fatwas reflects the dynamic mindset of the Muslim community, which continually adapts to evolving times and contexts.

This dynamic indicates progress within the Muslim community. Fatwas also serve as a vital means of disseminating Islamic teachings. Without fatwas, the practice of Islam—embraced by the majority of Indonesians—would risk stagnation, perceived as incapable of addressing contemporary problems. Herein lies the critical urgency of fatwas within society.

### **3.2. The Position of MUI Fatwas within the Indonesian Government Policy System**

The government is a group of individuals entrusted with authority. This authority must be exercised to lead and direct according to the needs and interests of the entire body politic. The relationship between religion and government in Indonesia is a topic that seemingly never ceases to be discussed. The extent to which the government, as the party deemed to have authority, can intervene and regulate the religious life of its citizens is a fundamental issue in the discourse on religion-state relations (Mohamad Latief et al., 2022). In the case of Indonesia, the founding fathers agreed from the outset that Indonesia is neither a secular state, which separates religion as a private domain from the state as a public domain, nor a theocratic state, which sees religion and politics as a unified entity, but rather a state based on Pancasila.

The legal basis for fatwas themselves is derived from the Qur'an and Hadith, which are further elaborated using the principles of *ushul fiqh* (Islamic jurisprudence methodology) to extract legal rulings from abstract texts (Mu'adzah, 2022). The method of *ijtihad* (independent legal reasoning) is the main approach used by ulama to convince society of legal solutions for issues where no explicit rulings exist (Sulaeman, 2021). This differs from the position of fatwas within the national legal system, as stipulated in Law Number 12 of 2011 concerning the formation of legislation, which establishes the hierarchy of laws in the national legal system as follows: the 1945 Constitution of the Republic of Indonesia, Laws/Government Regulations in Lieu of Laws, Government Regulations, Presidential Regulations, and Regional Regulations (Suhartono, 2017). Regional regulations include Provincial Regulations, Regency/City Regulations, and Village Regulations or their equivalents.

The challenges related to religious policies are a common phenomenon occurring in various countries around the world, including Indonesia (Estuningtyas, 2018). The scope of state intervention in religious affairs depends significantly on the form of government, whether democratic, liberal, or authoritarian. Although democratic states are generally perceived as accommodating religious freedom, they are not immune to grassroots level problems (Andiko, 2019). Essentially, the state administratively regulates the operational aspects and governance policies concerning religion. However, the “core and substance of religious matters” primarily lie within the authority of the MUI, whose fatwas impact governance, developmental dimensions, and societal conditions.

Observing the background and process of issuing government political policies such as the Joint Decree (SKB) of three ministers reveals the involvement of numerous elements,

which can be categorized into two political structures: the supra-structural political sphere (the governmental political sphere), referring to political life at the governmental level, including institutions of the state and power relations among them; and the infra-structural political sphere (the socio-political sphere), referring to political activities at the societal level, which influence the tasks of state institutions in government operations.

The term legal politics or legislative politics is based on the principle that laws or regulations are part of political products, since legislation is essentially a design or outcome crafted by political bodies. Factors influencing changes in law or legislation include political, socio-cultural, economic, international, and technological aspects. In countries where the majority of society adheres to specific value systems, lawmaking must consider the values and beliefs prevailing within that society.

Within the government policy system, fatwas hold a significant role in providing religious legal guidance to society. Although fatwas themselves do not carry binding legal authority, they play an important role in reality, often serving as a reference for behavior by both society and government across various aspects of national life, including political decision-making processes and government policy formulation as well as legislation.

### 3.3. The Perspective of *Siyasah Dusturiyah* on the Implementation of MUI Fatwas in the Indonesian Government Policy System

*Siyasah dusturiyah* is a branch of *fiqh siyasah* that discusses state legislation. This field covers concepts such as the constitution (the state constitution and the historical development of legislation in a country), legislation (the formulation process of laws), democratic institutions, and *shura* (consultative bodies), which are important pillars in legislation (Begovic, 2022). Additionally, this study examines the concept of the rule of law within *siyasah* and the reciprocal relationship between the government and citizens, including citizens' rights that must be protected.

Within Indonesia's constitutional legal system, the position of the MUI fatwa is considered aspirative law, which holds constructive moral authority for communities inclined to implement it. However, the fatwa cannot be used as a coercive tool against groups that disagree with the MUI fatwa because it does not constitute positive law (Fatihunnada et al., 2021).

The role of MUI is explained in the framework of *siyasah dusturiyah* as the relationship between the government and institutions managing affairs related to the public interest. MUI is an institution established by a group of scholars to deliberate on regulations and legislation demanded by the state's circumstances, ensuring conformity with religious principles. It represents the realization of public welfare (*maslahah*) and addresses societal needs (Adam, 2022).

Two important points should be emphasized. First, fatwas are responsive: they are legal opinions issued in response to inquiries or requests for fatwas (*based on demand*). Second, fatwas are non-binding regulations; in other words, Muslims who wish to follow a



fatwa may do so voluntarily, but there is no obligation to comply or implement it. Therefore, fatwas often relate to contemporary issues requiring legal answers. Consequently, fatwas frequently address concrete events. When one or two critical questions arise concerning dogma or law issued by an authorized institution, the official fatwa response becomes essential for religious social life. Explicitly, the normative basis of fatwas lies in the Qur'an and Sunnah, which also legitimize socio-economic practices.

MUI's role as a government advisor in resolving Islamic issues can be categorized within the domain of *al-Qada'* (judiciary). The judiciary is the institution that delivers just judgments among people, ruling according to what Allah has revealed. The legal foundation for *qadha* is referenced in Surah As-Shad / 38:26: "O David, indeed We have made you a successor (caliph) upon the earth, so judge between the people in truth and do not follow [your own] desire, as it will lead you astray from the way of Allah. Indeed, those who go astray from the way of Allah will have a severe punishment for having forgotten the Day of Account."

The principles that must be upheld in fatwas include justice, honesty, equality, brotherhood, and unity. To realize these principles, the supremacy of law, equitable economic welfare, respect for the right to life, ownership rights, and protection of human dignity must be ensured within a democratic atmosphere, both nationally and internationally. Realizing these requires *alijma' al-siyasi* (political consensus) aimed at the welfare of the ummah. Agreements made should take precedence over existing differences, in accordance with the legal maxim *al-mutafaq alaihi, muqaddamun 'ala al-mukhtalaf fih* (an established consensus can only be changed by another consensus of equal strength).

Institutionally, MUI, in the political infrastructure, belongs to the category of interest groups, more specifically institutional interest groups. Interest groups are collections of people united by common interests, whether public or specific to certain communities. The relationship between MUI and the government has developed rapidly; however, MUI consistently faces pressure to defend policies in implementing government programs. Thus, the presence of MUI fatwas assists the government in resolving social issues and can be equated with the role of an *ifta'* institution. Issuing fatwas essentially means conveying Allah's law to humans. In addressing such issues, MUI must carefully consider the welfare of the fatwa requester and understand the objectives intended to be achieved through the fatwa.

#### 4. Conclusion

The presence of MUI fatwas in society serves as guidance and direction, reflecting the promptness and accuracy of scholars' responses to questions concerning emerging and evolving issues within the community. As a solution to these developing problems, scholars engage in legal reasoning using systematic methodologies and well-established, consistent, and responsible theories grounded in strong evidences (*dalil*) to ensure the welfare of the general public and particularly the Muslim community. In terms of its role in policy formation, the MUI fatwa functions as part of the infrastructure within the category of interest groups,

more precisely, institutional interest groups. This means that the MUI fatwa is not state law with sovereign authority enforceable upon the entire population. Moreover, MUI fatwas do not carry sanctions and are not obligatory for all citizens to follow.

From the perspective of *siyasah dusturiyah*, the MUI fatwa represents regulations and legislation necessitated by the conditions of the state, evaluated through the lens of conformity with religious principles, embodying the realization of public welfare and fulfilling societal needs. Thus, the issuance of MUI fatwas aims to assist the government in resolving social issues, especially those concerning the Muslim community, guiding them toward the cultivation of noble character (*akhlakul karimah*) and the establishment of a just and prosperous society that is pleasing to Allah SWT.

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