

The Existence of MUI *Fatwa* No. 1 of 2004 Concerning Islamic Financial Institutions for the Indonesian Muslim Community

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Abstract. *In order to support and improve the country's economy through Islamic financial institutions, the government through the Indonesian Ulema Council issued MUI Fatwa No. 1 of 2004. The research method used is a normative legal approach method supported by primary data, namely by using unstructured interviews with human resources working in banking institutions. The existence of MUI Fatwa No. 1 of 2004 shows that it is not yet as effective as expected in inviting Indonesian Muslim society to switch to a profit-sharing system and abandon usury. The practice of implementing the sharia system is still hampered by several things, including the service felt by the community in sharia banking institutions is still not satisfactory enough, such as the burden of profit sharing which is still high, the implementation of the sharia system which seems to be the same as conventional banks, the knowledge of human resources about sharia which is still minimal and the explanation of information is lacking.*

Keywords: *Effectiveness; Fatwa; Financial; Islamic; MUI.*

1. Introduction

Indonesia, with a majority Muslim population, is a great hope for Islamic economic financial institutions, especially banking institutions, to attract the interest of the Indonesian people to use Islamic banking institutions. Islamic banking has been present in Indonesia since 1992 with the establishment of Bank Muamalat which was founded and initiated by ICMI and has opened wide the door for Indonesian Muslims to utilize or use this banking institution.

The establishment of this Islamic banking institution is in line with what is stated in Article 33 paragraph (4) of the 1945 Constitution which reads:

"The national economy is organized based on economic democracy with the principles of togetherness, fair efficiency, sustainability, environmental

awareness, independence, and by maintaining a balance between progress and national economic unity."

Then in 1998, Law No. 10 of 1998 concerning Islamic banking was issued as a national legal umbrella for the existence of Islamic banking institutions. Article 1 point 3 states that:

General Bank is a bank that carries out business activities conventionally and/or based on Sharia Principles which in its activities provides services in payment transactions, including in 2008 with the issuance of Law No. 21 of 2008 concerning Sharia Banking, further strengthening the position of Sharia Banks as institutions that are expected to be able to provide the Indonesian Muslim community who hope for a halal life in this world and the hereafter, thus encouraging the Government to establish banks with a profit-sharing system.

Since the establishment of Islamic banks (Bank Muamalat) in 1992 until now, it has been 32 years, of course many problems have emerged, from the attitude of doubt from the community to how sharia principles can be applied according to sharia in the banking institution. The assumption of some people towards Islamic banking institutions that Islamic banking is no different from conventional banking that has changed clothes is still attached to this day, it is proven that not all Muslims as the majority religion in Indonesia have migrated to using Islamic banking institutions when transacting with other parties. Thus the presence of MUI *Fatwa* No. 1 of 2004 is not so significant to the migration of Indonesian Muslims to Islamic banking institutions.

As society progresses and the problems faced become more complex, scholars realize the need for *ijtihad* (Nur Hidayah, 2011). *Fatwa* is an *ijtihad* made by agreement of the scholars who are members of the Indonesian Ulema Council (MUI), the Government through the MUI *Fatwa* has invited the Indonesian Muslim community to migrate from conventional to the sharia system, because its nature is only an appeal without any sanctions, then this does not make the Indonesian Muslim community immediately migrate, they do not really pay attention to the threats of Allah as stated in the Qur'an and the Hadith, it is also possible that there are various transactions that do not require the use of sharia banking institutions.

Meanwhile, financial institutions with Sharia principles are different from conventional financial institutions, where the rules of the agreement are based on Islamic law between the institution and other parties, such as activities of saving funds or financing businesses or other activities (Kasmir, 2002). Based on the description above, the author takes the title of the existence of MUI *Fatwa* No. 1 of 2004 concerning Islamic Economic Financial Institutions.

2. Research Methods

This study uses a descriptive analytical approach, using a normative legal approach method or a normative-legal research approach method, or according to Zainudin it is called normative legal research or doctrinal legal research, namely legal

research that uses secondary data. According to Soerjono Soekanto, normative legal research is legal research that is carried out by examining library materials or secondary data alone (Soerjono Soekanto and Sri Mamudji, 2010). Based on the nature of the research, the types of research data can be classified into two, namely secondary data as the main data and primary data as supporting data.

3. Result and Discussion

3.1. Existence of MUI *Fatwa* No. 1 of 2004 concerning Islamic Economic Financial Institutions for Muslim Communities in Indonesia

A *fatwa* is a legal decision on a subject of Islamic law given by a qualified Islamic legal expert in response to a question posed by an individual, judge, or government. DSN *fatwas* have an important meaning in Indonesian society, especially Muslims (Agus Waluyo, 2016). A legal expert who issues a *fatwa* is called *mufti*, and the act of issuing a *fatwa* is called *ifta'*. *Fatwas* have played an important role throughout Islamic history, taking new forms in the modern era (Wikipedia). *Mufti* in Indonesia related to banking institutions are scholars who are members of the Indonesian Ulema Council. Thousands of *fatwas* have been issued by the MUI.

In the modern era, *fatwas* have reflected changing economic, social and political circumstances, and addressed concerns that have arisen in Muslim communities. The spread of codified state law and Western-style legal education in modern Muslim countries has replaced the *muftis'* traditional role in clarifying and elaborating the law applied in the courts. Instead, modern *fatwas* increasingly serve as advisors to the general public on other aspects of the Shari'a, particularly questions concerning religious ritual and daily life.

Modern public *fatwas* have sometimes provoked controversy in the Muslim world, and several *fatwas* in recent decades have become famous worldwide. The legal methodology of modern *fatwas* often deviates from pre-modern practice, particularly in the West. The advent of modern media and universal education has transformed the traditional institution of the *fatwa* in a number of ways. Although the proliferation of contemporary *fatwas* attests to the importance of Islamic authenticity to many Muslims, little research has been conducted to determine how much influence these *fatwas* have on their beliefs or behavior.

According to KBBI, *fatwa* is a decision or opinion given by a *mufti* on a problem; in other words, it is the advice of a scholar; good lesson; advice. In 1975, the Indonesian Ulema Council was established precisely on the date, 7 Rajab 1395 H, coinciding with July 26, 1975 in Jakarta, as a result of a meeting or deliberation of scholars, intellectuals and *zu'ama* who came from various corners of the country. MUI members are representatives of Islamic organizations in Indonesia,

Initially, MUI was founded with the aim of:

1. Strengthening religion in the manner described Pancasila to ensure national resilience.

2. Participation of Ulama in national development.
3. Maintaining harmony between religious communities in Indonesia.

Along with the development of the dynamics of social problems that require clear and definite references and have not been regulated in government product regulations, the MUI as an organization that brings together Islamic organizations in Indonesia, then the authority of the MUI is expanded by allowing the MUI to issue rules or laws that are usually referred to as *Fatwas*.

MUI's devotion is contained in MUI's seven duties, namely (Wikipedia):

- a. as a bodyguard for adherents of the Islamic faith
- b. as an educator and guide for followers of Islam
- c. as a recruiter of better cadres
- d. as a solution provider for religious problems in the international world
- e. as a formulator of the concept of Islamic education
- f. as a content guard in the mass media
- g. as an organization that carries out cooperation with religious organizations

Thousands of *fatwas* have been issued by the MUI as one of the MUI's duties as a solution provider for religious problems, one of the *fatwas* issued is *Fatwa* No. 1 of 2004 concerning INTEREST LAW (INTEREST/FA'IDAH), almost a decade after the establishment of banking institutions with a sharia system, this *fatwa* was issued.

The contents of *Fatwa* No. 1 of 2004 concerning Interest (Interest/*Fa'idah*) are as follows:

First: Understanding Interest and Usury

1. Flower (interest/*fa'idah*) is an additional fee charged in a money loan transaction (*al-qardh*) which is calculated from the principal without considering the use/yield of the principal, based on the time period, calculated with certainty in advance, and generally based on a percentage.
2. Usury is an addition (*ziyadah*) without reward which occurs due to a delay in payment previously agreement. And this is what is called *riba nasi'ah*.

Second: Law of Interest

1. Practice Current interest on money has met the criteria of usury that occurred during the time of the Prophet Muhammad SAW, namely usury *nasi'ah*. Thus, the practice of interest on money is a form of usury, and usury is forbidden by law.
2. Practice This interest is forbidden by law, whether carried out by banks, insurance, capital markets, pawnshops, cooperatives and other financial institutions or by individuals.

Third: Dealing with Financial Institutions

Conventional

1. For areas where there are already offices/networks of Islamic Financial Institutions and they are easy to reach, transactions based on interest calculations are not permitted.
2. For areas where there are no offices/networks of Islamic Financial Institutions are permitted to carry out transaction activities at conventional financial institutions based on the principle of *dharurat/hajat*.

Based on the above *fatwa*, the MUI's appeal for Indonesian Muslims to switch to Islamic financial institutions is because it is closely related to usury. Usury is identical to bank interest. Usury is prohibited by Allah SWT as stated in Surah Al Imran verse 130:

"O you who believe, do not consume usury in doubles and fear Allah so that you will get good luck."

The tendency of people to use the interest system is more aimed at optimizing the fulfillment of personal interests (Heri Sudarsono, 2005).

While the system applied in Islamic financial institutions is a profit-sharing system. The profit-sharing system is a system that includes the sharing of business results between fund providers or fund owners (investors) and fund managers (banks) (Frianto Pandia et al., 2004).

The *fatwa* as explained above is an appeal or recommendation without any sanctions that are strictly regulated, so that until now the Indonesian Muslim community has not significantly switched to using Islamic financial institutions.

3.2. Problems in implementing MUI *Fatwa* No. 1 of 2004 concerning Islamic Economic Financial Institutions for the Community in Indonesia

Initially, *fatwas* were issued by individuals, namely religious figures who were used as a reference point to raise issues or problems, then given answers according to Islamic law. As the nature of *fatwas* that do not have binding power, in Indonesia, *fatwas* issued by individuals or groups that are members of a community organization do not bind their members at all (Cholil Nafis, M., 2011). The position of the *fatwa* of the MUI National Sharia Council can be binding if it is legitimized by law in accordance with its interests or by other regulations that are one of the hierarchies of laws and regulations in Indonesia. Based on Law No. 12 of 2011 as amended by Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Laws and Regulations, that *fatwa* is not included in the order of the laws and regulations, meaning that the position of *fatwa* as a regulation that must be obeyed is not strong.

Regarding the order of legislation, Article 7 explains the types and hierarchy of legislation, namely:

- The 1945 Constitution.
- Decree of the People's Consultative Assembly.
- Law/Government Regulation in Lieu of Law.
- Government regulations.
- Presidential decree.
- Provincial Regional Regulations.
- Regency/City Regional Regulations.

The hierarchy is based on the principle that lower laws and regulations must not conflict with higher laws and regulations. Types of laws and regulations other than those mentioned in the order of the laws and regulations include regulations stipulated by the MPR, DPR, DPD, Supreme Court, Constitutional Court, BPK, KY, BI, Ministers, Agencies, institutions, or commissions of the same level established by law or the government by order of law, Provincial Regional Representative Council, governor, Regency or City Regional People's Representative Council, regent or mayor, village head or the equivalent. *Fatwa* No. 1 of 2004 was issued by the MUI National Sharia Council, *Fatwa* or regulations containing the prohibition of usury were issued by the Indonesian Ulema Council. The Indonesian Ulema Council (MUI; Arabic: مجلس العلماء الإندونيسي, translit. Majlis al-'Ulama' al-Indunīsī) is a non-governmental organization that accommodates Islamic scholars, zuama, and intellectuals to guide, foster, and protect Muslims in Indonesia, as a forum for Islamic scholars to gather. Established on 17 Rajab 1395 Hijriah or 26 July 1975 AD in Jakarta, which is based on the general rules contained in Law No. 17 of 2013 concerning Community Organizations, the position of the MUI as a non-governmental organization is not as strong as a legislative institution as a law-making institution, therefore this *Fatwa* is not allowed to contradict the regulations above it. The nature of the *fatwas* issued by the MUI according to Ainun Najib (Ainun Najib, 2012). The MUI *fatwa* is not a state law that has sovereignty that can be imposed on all people, the MUI *fatwa* also has no sanctions and does not have to be obeyed by all citizens. This *fatwa* is only binding and obeyed by the Muslim community who feel they have ties to the MUI itself, for example the presence of MUI *Fatwa* No. 1 of 2004 which contains:

First: Understanding Interest and Usury

1. Flowers (interest/*fa'idah*) are additional items worn inside money loan transactions (*al-qardh*) which are calculated from principal of the loan without considering the utilization/results. The subject matter, based on the time period, is calculated in a definitely up front, and generally based on a percentage.
2. Usury is an addition (*ziyadah*) without compensation that occurs due to a delay in payment that was previously agreed upon. And this is what is called *riba nasi'ah*.

Second: Law of Interest

1. The current practice of interest on money has met the criteria of usury that occurred during the time of the Prophet Muhammad SAW, namely usury *nasi'ah*. Thus, the practice of interest on money is one form of usury, and usury is forbidden by law.
2. The practice of interest is forbidden by law, whether carried out by banks, insurance, capital markets, pawnshops, cooperatives and other financial institutions or by individuals.

Third: Conduct transactions with conventional financial institutions

1. For areas where there are already offices/networks of Islamic Financial Institutions and they are easy to reach, transactions based on interest calculations are not permitted.
2. For areas where there are no offices/networks of Islamic Financial Institutions, it is permissible to carry out transaction activities at conventional financial institutions based on the principle of *dharurat/hajat*.

The *fatwa* was of course deliberately made by the MUI for both Muslim men and women throughout Indonesia. In 1992, Bank Muamalat was established, the first bank with a sharia system established in Indonesia, but it was only in 2004 that *Fatwa* No. 1 of 2004 emerged, a *fatwa* containing an appeal for Muslims in Indonesia not to use usury practices in conducting economic transactions and also appealing to Muslims to use sharia financial institutions that are easily accessible. The establishment of this sharia-based bank did not immediately lead the Indonesian Muslim population to switch to the sharia system, one of which was the emergence of *fatwa* No. 1 of 2004.

With the establishment of Bank Muamalat, of course there are still many problems faced by the bank so that it is in demand by Muslims in Indonesia and how to survive and develop the banking business amidst the rapid pace of significant economic growth. The general public generally said that the establishment of this Islamic banking institution has not been followed by adequate facilities. The fairly massive economic movement certainly requires the support of modern and fast facilities. The community will certainly use these facilities and infrastructure to support their economic activities to run safely and smoothly. How will they use Islamic banks if Islamic bank ATMs are not yet available in sufficient numbers in each region.

The public services felt by the public in Islamic banking institutions are still not satisfactory enough, such as the burden of profit sharing which is still high, the implementation of the Islamic system which seems to be the same as conventional banks, the knowledge of human resources about Islamic law which is still minimal and the explanation of information which is lacking. Other problems that may occur include: Operational Challenges The implementation of this *fatwa* in the practice of buying and selling transactions at BMT can cause, for

example, BMT (Baitul Maal wat Tamwil) may experience difficulties in adjusting its business model to the provisions of the *fatwa*, including determining costs and benefits, managing risks, and developing products that are in accordance with sharia principles. Sharia principles as regulated by the National Sharia Council must be implemented by all sharia financial institutions. There are many provisions of contracts that have been regulated by the National Sharia Council with several *fatwa*.

4. Conclusion

A *fatwa* is an appeal or recommendation without any sanctions that are strictly regulated, so that the Indonesian Muslim community has not yet significantly switched to using Islamic financial institutions. *Fatwas* do not have binding power, in Indonesia, *fatwas* issued by individuals or groups that are members of a community organization do not bind their members at all. The position of the *fatwa* of the MUI National Sharia Council can be binding if it is legitimized by law in accordance with its interests or by other regulations that are part of the hierarchy of laws and regulations in Indonesia, as regulated in Law No. 12 of 2011 as amended by Law No. 15 of 2019 concerning Amendments to Law No. 12 of 2011 concerning the Formation of Legislation, that *fatwas* are not included in the order of the regulations, meaning that the position of *fatwas* as a regulation that must be obeyed is not strong. In general, the implementation of *Fatwa* No. 1 of 2004 has not been implemented in its entirety. The practice of implementing the sharia system is still constrained by several things, including the services felt by the community in sharia banking institutions are still not satisfactory enough, such as the burden of profit sharing which is still high, the implementation of the sharia system which seems to be the same as conventional banks, the knowledge of human resources about sharia which is still minimal and the explanation of information is lacking. The problem of implementing the MUI *Fatwa* No. 1 of 2004 requires awareness and serious efforts from existing stakeholders, the Government through the OJK has made its regulations as well as the MUI mass organization has also issued its *fatwa*, just waiting for the role of the DPS (Sharia Supervisory Board) to be able to provide optimal supervision.

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