

ANALYTICAL FRAMEWORK IN STUDY OF FATWAS ON *SHARIA* ECONOMICS

Sofian Al Hakim

Abstrak: Sebagai sebuah pendapat hukum, fatwa merupakan bagian penting dalam perkembangan ekonomi Syariah. Nilai-nilai Islam yang terwujud dalam norma syariah dikukuhkan dalam fatwa. Dalam kasus ekonomi syariah, fatwa sendiri ditetapkan ulama yang dipandang memiliki otoritas keilmuan yang mumpuni dibidang *fiqh muamalah maliyah* dan ekonomi syariah. Pada prinsipnya, fatwa bersifat tidak mengikat, karena fatwa adalah pendapat hukum. Namun, fatwa menjadi berkekuatan mengikat manakala fatwa ditetapkan sebagai dasar dalam penetapan kepatuhan atas norma-norma syariah oleh undang-undang. Sebagaimana diterapkan di beberapa negara, seperti Malaysia dan Indonesia. Untuk dapat melakukan analisis mendalam terhadap fatwa, diperlukan kerangka analisis yang dapat dijadikan panduan dalam melakukan kajian. Ada beberapa kerangka analisis yang disusun para ahli untuk menganalisis fatwa ekonomi syariah. Artikel ini mendeskripsikan kerangka analisis yang diadaptasi dari Emitai Etzioni ketika menjelaskan perubahan sosial dalam pembuatan fatwa. Fatwa dianalisis dengan memperhatikan sumber lahirnya fatwa, substansi yang merupakan isi dari fatwa, dan dampak fatwa terhadap ekonomi serta keuangan syariah.

Kata kunci: fatwa, ekonomi syariah, keuangan Islam

Abstract: As a legal opinion, fatwas are an important part of the development of the *Sharia* economics. Islamic values embodied in *sharia* norms are confirmed in the fatwa. In case of *sharia* economics, the fatwa itself was determined by scholars who are considered to have scientific authority capable in the field of fiqh muamalah maliyah and Islamic economics. In principle, the fatwa is non-binding. Because, fatwas are legal opinions. However, the fatwa has a binding power when the fatwa is established as the basis for establishing compliance with *sharia* norms by law. As applied in several countries, such as Malaysia and Indonesia. This fatwa model is an interesting phenomenon to study. In order to conduct an in-depth analysis of the fatwa an analysis framework is needed that can be used as a guide in conducting a study. There are several analytical frameworks prepared by experts to analyze *sharia* economic fatwas. This article describes the analytical framework adapted from Emitai Etzioni when explaining social change. Fatwas are analyzed by considering the source of the birth of fatwa, the substance which is the content of the fatwa, and the impact of the fatwa on the economy and Islamic finance.

Keywords: fatwa, *sharia* economic, islamic finance

Introduction

A fatwa is an important part of the growth and development of Islamic financial institutions. In all *sharia* financial institutions (Samy Nathan Garas, Chris Pierce, 2010), banks and non-banks, fatwa become an operational reference so that Islamic financial institutions can certainly adhere to the principles of Islamic law (Mughees Shaukati, 2009) and obtain optimal profit effectively and efficiently (Ashraf Wajidi Dusuki, 2015). Fatwa regarding Islamic financial institutions grows along with the development of the Islamic finance industry (Sofyan Al-Hakim, 2013). Islamic financial institutions, the parties requesting the fatwa, are the direct cause or the trigger of the fatwa issuance. This is because the *fatwa* is the answer of the mufti (*the fatwa giver*) to *mustafti's* (person who requests for a *fatwa*) questions.

One dynamic aspect of Islamic law is fatwa (Wael B. Hallaq, 1996). Fatwa is a product of Islamic legal thought that keeps growing until today. Even though fatwa is legally non-binding, it becomes a reference in determining the choice of Islamic law. Fatwa, formulated by the fatwa authorities, is a basis for the actors in sharia financial institutions to operate and develop sharia finance products (Hasanudin, 2008). The development and operational management of sharia finance institutions need to consider the substance and form of contracts used as a reference (Sami al-Suwalem, 2006).

In Indonesia, the authority to issue sharia finance related-fatwa is National Sharia Council of the Indonesian Ulama Council (Dewan Syariah Nasional – Majelis Ulama Indonesia). This institution is established based on the Decree of Bank of Indonesia Directors concerning Sharia Based General Banks (12 May 1999). Article 1 (j) of this Decree states that DSN MUI is responsible for ensuring the sharia compliance of products, services and activities in banking businesses. In the same paragraph, it is explained that the Sharia Monitoring Council (DPS) is an independent body formed by DSN to be placed in a bank with tasks and duties determined by the DSN.

Then, Law No. 21 of 2008 concerning Sharia Banking, which was promulgated on July 16, 2008, restates the oversight function of sharia compliance, even though the law does not specifically mention DSN. The Law posits that the sharia compliance authority in the Indonesian

Ulama Council (MUI), represented by the *Sharia* Supervisory Board (DPS). This board must be established in each *Sharia* Bank and *Sharia* Business Unit (*Unit Usaha Syariah*) in conventional banks, as is described in “General Explanation” section of that law. Based on Law No. 21 of 2008, fatwa formulation and supervision is in the authority of MUI. Then, these duties are carried out by an institution formed by MUI, called DSN. Thus, the DSN is not specifically mentioned in the Act but is the component of MUI that has the authority to formulate the sharia banking principles and become the supervisor in the implementation of such principles.

In particular, there are two DSN-MUI authorities (Asrori S. Karni, 2010). First, MUI is the only authorized body that has a duty to formulate fatwa based sharia principles, as is mentioned in the Act. The *sharia* principles in question are a number of contract provisions derived from Islamic legal scholars’ understanding of Islamic legal resources. In other words, these principles were developed by *fiqh* (Islamic jurisprudence) scholars, and then the DSN members reviewed with more comprehensive approaches. Eventually, they produce *fatwas* that become BI’s considerations in making regulations (Ma’ruf Amin, 2008). Due to the status of the MUI’s *fatwas* that are not binding legally, the fatwas are not recognized as a legal source in Indonesia. To be recognized, the *fatwas* are issued in the Regulation of the Bank of Indonesia (PBI). In this case, Sharia Banking Committee (KPS) is responsible for dealing with the transition of MUI fatwas to PBI.

Second, considering the supervision role, MUI upholds particular sharia compliance mechanisms. These mechanisms are implemented by an internal control division in the form of DPS in every Islamic bank. The role of the MUI is to recommend candidates for DPS (Dewan Pengawas Syariah/ *Sharia* Supervisory Board). After that, the DPS has the authority to oversee the activities of *sharia* financial institutions internally. However, the General Meeting of Shareholders (GMS) is the one that determines the DPS. This DPS represents the sharia compliance authority of the MUI to be applied in every Islamic bank. This means that the DPS is an extension of the MUI to monitor the implementation of the MUI fatwas.

To be able to analyze fatwas, a theoretical framework is needed to be used as a reference in conducting in-depth studies. Therefore, this

study aims at answering the following question: What is the analytical framework used to understanding the Islamic economic fatwas in Indonesia? This question is important to enable a broader elaboration of the theoretical framework used in reviewing fatwas, which in this case is fatwas on sharia economic. The theoretical framework will become a reference for researchers in studying fatwa as a product of Islamic legal thought.

Methodology

In the context of answering these questions, this study applies juridical-normative methods (Soerjono Soekanto and Sri Mamudji, 2013). This method is chosen because the object of this research is to seek the concept of how to conduct a study of *fatwas*, and not on the empirical side of the law as a rule (norm) but as a legal opinion and reference in understanding Islamic law. This method is expected to reveal the framework for understanding *fatwas*. Soerjono Soekanto describes juridical-normative research as research on library materials (Soerjono Soekanto and Sri Mamudji, 2013). Therefore, research will explore a lot of library materials related to *fatwas*.

The Position of *Fatwa* in Tradition of Islamic Law

According to Atho Mudzhar, Islamic legal thinking products can be divided into four categories, namely: the books of fiqh (*kitab fiqh*); the decisions of Islamic courts (*qada*); the laws and regulations in Muslim countries (*qanun*); and *fatwas* of Islamic scholars (M. Atho Mudzhar, 1992). Three of the four products of Islamic legal thought are relatively dynamic following social changes. Only products of legal thought that are codified into fiqh books relatively immune to changes. This is because the revisions to some of them are considered interfering with the integrity of the whole. Fiqh books consist of the understandings of ulama about matters that occur during their times. The contents of the books are not considered expired as long as the matters are relevant to contemporary reality. This means that the contents tend to be considered valid for all time.

Concerning the binding capacity of the Islamic legal thought products, court decisions, and laws and regulations are binding with different binding powers. Court decisions bind the parties involved

in certain legal cases, while legislations bind all citizens in a county. Meanwhile, two other legal products, fiqh books and fatwas, are not binding. However, there has been an asymmetrical relationship between the books and the readers and between the muftis and mustaftis. Although a fatwa is not binding, it is closely related to those asking it. So, mustafti as an ethical relationship to obey the fatwa (Al-Nawawi, 1988).

The word *fatwa* is rooted in the word ف - ت - ي. According to Ibn Manzur, the *fatwa* is the *isim masdar* or verbal noun from *fatawa*, which means giving *fatwa* (ifta). The word *ifta* can be understood in two contexts: 1) as brainstorming in discussions and 2) giving answers to questions. An example of the first context is “I gave the idea of thinking when he expressed his idea” (أَفْضَيْتُ فَلَانًا رُؤْيَا رَأَاهَا إِذَا عَبَّرَهَا لَهُ). As for the second context, the example is: “I gave a fatwa on the problem when I answered to it” (وَأَفْتَيْتَهُ فِي مَسْأَلَتِهِ إِذَا أَجَبْتَهُ عَنْهَا). *Fatwa* also means mutuating each other in the context of legal conflicts (أَنَّ قَوْمًا تَفَاتَوْا إِلَيْهِ مَعْنَاهُ تَحَاكَمُوا إِلَيْهِ وَارْتَفَعُوا إِلَيْهِ).

In an etymological perspective, the word *fatwa* is derived from the word *al-fata*, which means a strong man. This is because a young man is able to solve the problem. The other *isim masdar* is *al-futya*, which means to explain the problem from a legal perspective (تَبْيِينُ الْمَشْكَلِ مِنَ الْأَحْكَامِ). The use of the word *fatwa*, in the contemporary context, is the borrowing (*isti'arah*) of the meaning of *al-fata* (Yusuf al-Qaradawi, 1988). According to Ibn Manzur, words *الفتوى* and *الفتيا* are *masdar* (noun), which means *الإفتاء* or giving advice. According to al-Ashaqar in the book “*al-Futya wa Manahij al-Ifta: Bahth al- Usuli*” (1986), the word *futya* is more widely used than *fatwa*. According to al-Ashaqar, the term *futya* contains more *fashahah* (clarity) than the *fatwa*. At least 12 books of hadith use the word *futya*. Lately, however, the word *fatwa* is not often used anymore. The more common language referring to the mufti answer is *fatwa*.

In Mu'jam Lughat al-Fuqaha, the *fatwa* is defined as follows: *الْفَتْوَى: الْحُكْمُ الشَّرْعِيُّ الَّذِي يَبْيُئُهُ الْقَاضِيُ لِمَنْ سَأَلَ عَنْهُ* (“*Fatwa* is the *sharia* law ‘described by a fiqh expert for the person asking him’”). According to Quraish Shihab, the *fatwa* comes from Arabic *al-ifta*, *al-fatwa*, which is understood as “giving a decision.” *Fatwa* is not a legal decision made easily and willingly, which is called making law without basis (*al-tahakum*). *Fatwa* is always related to who is authorized to give *fatwa* (*ijazah al-ifta*), *fatwa* code of ethics (*adab al-ifta*), and

method of making *fatwa* (al-istinbat). Yusuf Qaradawi understands the meaning of *fatwas* in the present context. According to the Qaradawi (1988) *fatwa* is:

الْفَتْوَى شَرْعًا: بَيَانُ الْحُكْمِ الشَّرْعِيِّ فِي قَضِيَّةٍ مِنْ الْقَضَايَا جَوَابًا عَلَى سُؤَالٍ
سَائِلٍ مُعَيَّنٍ كَانَ أَمْ مُبْهَمًا, فَرْدًا أَوْ جَمَاعَةً

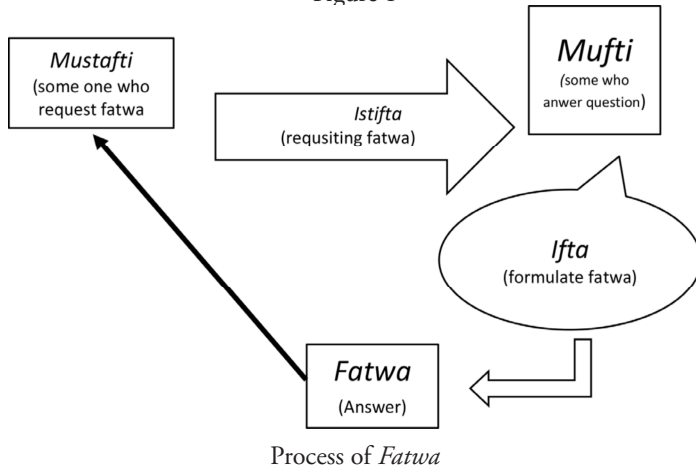
Fatwa, according to sharia, is a legal explanation on various issues as answers to questions, from clear or unclear questions, and both individual and community.

Al-Qardawi's definition mentions that *fatwa* only for legal issues, not *aqidah* (theology) or morality. In the case of *fatwa*, the questioners do not have to know the background of the mufti. This is because the questioner can be anyone and from anywhere. Finally, the *fatwa* is the work of mufti that can be done individually or institutionally. Likewise, the *fatwa* is for an individual or community.

The team of authors of the Van Hove encyclopaedia of Islamic law (2000) added one of the characteristics of a *fatwa*, which is non-binding. According to the authors, the *fatwa* means the opinion expressed by a mujtahid or faqih as an answer to a question submitted by a person who requests *fatwa* in a non-binding case. The party requesting the *fatwa* can be individuals, institutions and community groups. The *fatwa* put forward by the mujtahid or fakih must not be followed by people who ask for a *fatwa*, and therefore the *fatwa* does not have binding power. According to Amir Syarifuddin (1986), definitively it is indeed difficult to formulate *ifta* or act on it. However, a simple formula can be made, namely: "Efforts to give an explanation of the shari'a law by experts to people who do not know it".

From this simple formula, it is easy to find out the specific nature or characteristics of the *fatwa* functions, namely: a) *ifta* is an effort to give an explanation; b) the explanation given is about shari'a related law 'obtained through *ijtihad*; c) the person who provides the explanation is a person who is an expert in the respective field; d) The explanation is given to people who ask, and who do not know the law. Thus, the process of obtaining a *fatwa* or legal consultation in order to obtain a *fatwa* (*futya*) has six components, namely the questioner (*mustafti*), the question (*mustafta fih*), the questioning process (*istifta*), the questioned person (*mufti*), the process to answer (*ifta*) and answers (*fatwa*) (Sofian Al-Hakim, 2019).

Figure 1



Several Studies on *Fatwa*

Fatwa has become the object of study that attracts scholars. In the context of the role of *fatwa* in the development of Islamic law, Wael B. Hallaq's thesis is an important one. Hallaq's thesis, entitled "From *Fatwas* to Furu: Growth and Change in Islamic Substantive Law" emphasizes the role of *fatwa* in the formation of Islamic Law (Wael B. Hallaq, 1996). It is different from Joseph Schacht's theory, which confirms that Islamic law does not yet exist except at the end of the first century of hijra (Faisar Ananda Arfa, 1996). Hallaq stated that Islamic law had developed since the Prophet Muhammad lived when the Qur'an was revealed. Hallaq's theory was built on the existence of a *fatwa*. *Fatwas* made by mufti are usually given to solve contemporary problems. The fatwas are transformed into furu works through several processes. The form furu' is nothing but fiqh which is expected to provide a solution to the legal case faced. From furu', the faqih develops legal doctrines according to their respective schools.

Fatwa acts as an unbroken source that provides an opportunity for the law to enlarge its material. As such, the *fatwa* is an overview of old to the latest legal material, which is relevant to the needs of the same community that develops and changes over time. This argument is also supported by several factors. First, the ultimate goal of the ushul al-fiqh is ijtihad. It is carried out by mujtahid and mufti. This effort is not carried out by a judge. Second, in Islam, muftis are institutions that are free from government

institutions and are always considered free of political intrigues. Third, the *fatwa* issued by the mufti is the main source for elaborating and expanding fiqh works. Fourth, the *fatwas* are universal and can be applied to all cases that are the same. Fifth, the important role carried out by *fatwas* in substantive legal formations has a relationship similar to the dialectical relationship between *fatwas* and schools of thought.

In connection with the *fatwa*, David S. Power (1996) argues that *fatwas* are related diachronically to the legal doctrine of a school. He describes how the dynamics of the *fatwa* on waqf in North Africa were closely related to the development of the Maliki school's legal doctrine. Then, based on the analysis of legal cases in North Africa in the 14th Century, it was concluded that the vitality and flexibility of the Maliki school's legal system were influenced, even controlled, by political authorities. This shows that there is a relationship between the development of the law with social, economic and political changes.

Tobibatus'adah (2009) in a dissertation entitled "*Fatwas* of the MUI 2005: Religious Authority Versus Liberalization of Islamic Ideas in the Post-New Order" also confirmed this. This dissertation concluded that the MUI had experienced extraordinary transformation as the impact of political changes in Indonesia, which had also affect various religious issues in society. For example, the MUI's *fatwa* on the MUI 4th National Conference was a response to the rising issues, such as the notion of liberalism, secularism and religious pluralism carried out by several Islamic organizations. In this context, MUI became directly involved in the struggle against secularism.

Concerning the relationship between the institutions and the state, Jakob Skovgaard-Petersen (2004) also emphasizes that the muftis, from the nineteenth century to the present, have been no longer independent. This is related to funding sources for the operation of the *fatwa* institution. Institutions built by the state are bound by the ruling political regime. However, muftis who are not affiliated with the regime, even though under pressure, often provide *fatwas* that are different from the official *fatwa* of the state. This is also confirmed by the findings of Atho Muzhar (1993), in his dissertation, entitled, "*Fatwas* of the Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia 1975-1988". He conducted a *fatwa* study with a juridical and sociological approach. Based on his research, methodologically, the MUI *fatwas* do not follow a certain

pattern. Besides, there are several factors that influence the birth of a *fatwa*, such as supports from the government; modern developments; or issues of interfaith relations. These factors are sometimes single but often plural. This is also in line with the dissertation of M. Asrorun Ni'am (2008) entitled "Sadd Dzariah and its Application in the *Fatwa* of the MUI." This dissertation confirms the findings of Atho Mudzhar that the methodology for preparing the MUI *fatwa* is eclectic. *Sadd dzariah* is one method for drafting *fatwas*. Of the 201 *fatwas* studied, there were 22 *fatwas* (11%) determined based on *sadd dzariah*. There are three patterns in determining *sadd dzariah*, namely explicit manners; the use of the fikhiyah rules in line with *sadd dzariah*; and it is merely an argumentative explanation on the negative impact of a problem.

Studies on *fatwa* in Indonesia are also quite significant. From his research on *fatwas* in Indonesia, M.B. Hooker (2002) asserts that Indonesian Islam is original Islam. The Indonesian perspective on Islam is different from the perspective of other nations towards Islam. He almost said that Indonesian Islam had built its own school. *Sharia* is often understood rigidly because there is no creative space to develop it due to religious doctrines and politics. It turns out that *fatwas* in Indonesia have proven the opposite. There are at least three factors that determine the style of the *fatwas*. First, the style of indigenous Islam is typical of Indonesian Islam. Second, the Dutch colonialism has given colors to Islamic administration in Indonesia. Third, they have been changes in the position of religion and the role of the state after independence and regime change. Hooker's study (2008) has also arrived at a theory about the originality of Islamic *sharia* in Indonesia.

This was also confirmed by Sopa's Dissertation (2008) entitled "Halal Certification of MUI: MUI Halal Study of Food Products, Medicines and Cosmetics." This dissertation concluded that the certification carried out by MUI on food products, medicines and cosmetics tended not to follow the rules of halal formulated by certain schools but follow the opinion of the schools that are considered to be *rajih* (clear) and in accordance with the benefits of the people. In this case, MUI produces new fiqh.

Dissertation of Muhammad Taufiki (2008) entitled "Application of the Concept of Ijtihad Tatbiqi in the MUI *Fatwa*: Study of *Fatwas* 1997–2007" proves that the istinbath method of the Indonesian Ulema Council is in line with ijthihad tatbiqi initiated by al-Shatibi. It was also found that

although the MUI did not follow a certain pattern, MUI theoretically believed that *fatwas* could not be issued except after in-depth studies of the four legal sources. In practice, however, there are also conditions that are different from the agreed procedures. In other words, there is no particular standard pattern used by the MUI in formulating *fatwas*. Ijtihad *tatbiqi* can be used in *tahqiq al-manat or al-nazar ila ma'alat al-af'al*.

Dissertation of Wahidudin Adam (2002) entitled "Pattern of Absorption of MUI *Fatwa* in the 1975-1997 Legislation Regulations" concludes that Islamic law has a position and role as one of the sources in the formulation of the Indonesian legislations. The representation of Islamic law is seen from the acceptance of the MUI *fatwa*, which is seen as a product of Islamic legal thought, in the process of drafting applicable laws and regulations. The *fatwa* of the MUI, in this context, is a response to the draft legislation process. The MUI's responses to the bills can be in the form of full supports, supports with proposals for improvement, and rejection, in whole or in part. The pattern of absorption of the MUI *fatwa* in legislation can be approached by two levels of pattern analysis, namely *fatwa* to the legislation makers and to the legislation itself.

Muchtar Ali's Dissertation (2009) with the title Prospect of *Fatwa* as Positive Law in Indonesia A Historical and Juridical Review examines the *fatwa* from the historical side by presenting a number of data on the development of *fatwas*. After that, Ali examines the juridical aspect to answer the question how is the legal status of *fatwas* in Islamic law? Ali breaks down the *fatwa* not only descriptively but prescriptively and predictively. Prescription, in this case, is in the sense of providing a solution for how the methodology in the preparation of *fatwas* is in accordance with contemporary conditions, while predictive means how the prospect of a *fatwa* can be integrated into a positive legal system. The conclusion of this dissertation is that the *fatwa*, as part of Islamic law, has the opportunity to become a legal material for in Indonesian legislation. *Fatwa* accommodation is at least formed in legislative transformation, absorption and adaptation.

Dissertation of Muhammad Khairudin Hamsin (2008) entitled "Fatawa al-Majami al-Fiqhiyah al-Indunisiyah: Tahlil wa Dirasat Usuliyah" describes the existence of three mass organizations in Indonesia such as Muhammadiyah, NU and MUI. These three organisations have produced *fatwas* relating to various matters. This research shows the importance of

fatwa institutions so that *fatwas* can be carried out in congregation. The existence of *fatwa* institutions in mass organisations can also be supervision to individual *fatwas*.

There are several studies related to the relationship between *fatwa* and *sharia* finance. One of which is the Dissertation of Djawahir Hejaziey (2010) entitled “Politics of National Law on Islamic Banking in Indonesia.” This study concludes that there is a close link between politics and law. The configuration of the law shows a synergic relationship between elitist legal products and responsive legal products. The birth of the law is, therefore, greatly influenced by religious, ideological, political, social and cultural values. In the case of *sharia* finance, the author proposes the need for the compilation of Islamic banking law.

Dissertation of Hasanudin (2008) entitled “The Concept and Standard of Multi-Covenants in the *Fatwa* of the National *Sharia* Council of the Indonesian Ulama Council.” concludes that the National Syari’ah Council of the Indonesian Ulema Council (DSN-MUI) did not clearly state the concept or understanding of multi-contract. It can only be said that the DSN-MUI rejects the multi-contract form of ‘uqud mutaqabilah, which means a contract that contains several contracts in it, while one contract is associated (*mu’allaq*) with another contract. Meanwhile, the multi-contract accepted and justified by DSN-MUI is a multi-contract in the sense of ‘u> d murakkabah with the form’ uqud mujtami’ah.

Another study is the dissertation of Yeni Salma Barlinti (2010) entitled “The Position of *Fatwa* of the National *Sharia* Council in the Indonesian National Legal System.” This study concludes that the position of the DSN *fatwa* in legislation is as the positive law and binding for *sharia* economic actors.

The strategic role of *fatwa* in the development of Islamic financial products is confirmed by Mughees Shaukati (2009) in his research entitled “General Perception of *Fatwa* and Its Role in Islamic Finance”. The legality of *sharia* financial products is determined by the decision of the mufti who holds the *sharia* compliance authority. Mohd Daud Bakar (2008), Chair of the Bank Negara Malaysia *Sharia* Advisory Council also emphasized this. The development of Islamic financial products can only be done through *ijtihad*. *Ijtihad* is nothing but a tool for developing a *sharia* financial system.

***Fatwa* Analysis Framework**

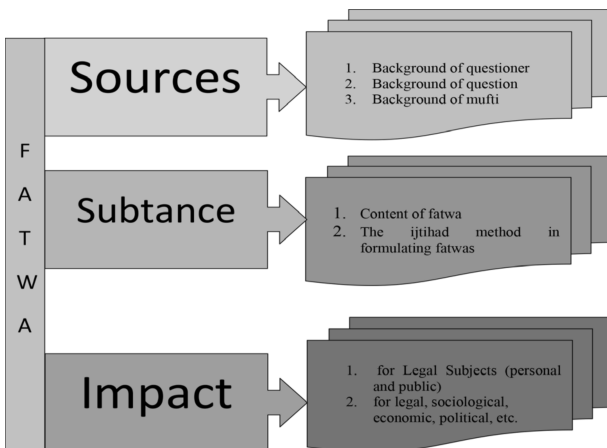
Examining the above studies with regards to *fatwa*, it can be seen that fatwa can be studied with three approaches: the sources used in fatwa, the substance of the fatwa, and its consequences. These three approaches can be used as analytical frameworks by also considering social contexts and changes, as described by Eva Halevy and Emitai Etzioni.

The process of *fatwa* formulation involves at least a person who asks for a *fatwa* and the person who gave the *fatwa*, or mufti. When it comes to asking for a *fatwa*, of course, the person is motivated by certain conditions. Likewise, the mufti, in answering questions, is influenced by his knowledge and backgrounds.

The questioning process is called *istifta*, and the answering process is called *ifta*. The product or answer to the questions is a *fatwa*. In fatwa preparation, the mufti considers the background, the legal sources and the method of *ijtihad*. Meanwhile, the fatwa itself is the content of the answers to legal questions. This means that the fatwa is the substance of the opinion of the mufti.

Another important aspect of fatwa is its impacts. The result of fatwa is an interesting study object because the impact of fatwa on certain matters will determine future decision making on the issue. The implementation of fatwa is a sociological subject that can be assessed through empirical legal method. The framework of fatwa analysis can be drawn as follows:

Figure 2



Fatwa Analysis Framework

Conclusion

Fatwa is Islamic legal thought products besides fiqh (Islamic jurisprudence), qada (decisions of Islamic court), and qanun (legislation in Muslim countries). As a legal opinion, the development of *fatwa* is in line dynamically with the development of society. *Fatwa* is a reference for the community in making legal choices and decisions. Because of that practical character, *fatwas* become part of the implementation of Islamic law.

The study of *fatwa* is important because of its significant position in the development of Islamic law. Therefore, the review of *fatwas* becomes crucial. To have a comprehensive study, *fatwas* can be assessed using three perspectives: in terms of the sources used, the substance of fatwa and its impacts. These three perspectives can be carried out together or partially.

References

- Abu Bakar, Mohd Daud. Developing Modern Islamic Financial System Via Ijtihad: an Overview dalam Mohd Daud Bakar dan Enku Rabiah Adawiyah Engku Ali (Ed.), *Essential Reading in Islamic Finance*. Kualalumpur: CERT Publication Sdn.Bhd, 2008.
- Adam, Wahidudin .Pola Penyerapan *Fatwa* MUI dalam Peraturan Perundang-Undangan 1975-1997.Disertasi, UIN Syarif Hidayatullah Jakarta:2002.
- Ali, Muchtar. Prospek *Fatwa* Sebagai Hukum Positif di Indonesia Suatu Tinjauan Historis dan Yuridis.Disertasi, UIN Syarif Hidayatullah Jakarta, 2009.
- Al-Hakim, Sofyan. “Perkembangan Regulasi Perbankan Syariah di Indonesia” *Ijtihad Jurnal Wacana Hukum Islam dan Kemanusiaan* Vol. 13 No. 1 (Juni 2013): 22.
- Al-Hakim, Sofian. . *Dinamika Fatwa Mudarabah dan Murabahah di Indonesia dan Malaysia*.Jakarta: SPS UIN JKT, 2019.
- Amin, Ma’ruf. *Fatwa Dalam Sistem Hukum Islam*. Jakarta: eISAS, 2008.
- Arfa, Faisar Ananda. Sejarah Pembentukan Hukum Islam; Studi Kritis tentang Hukum Islam di Barat.Jakarta: Pustaka Firdaud, 1996.
- Asshiddiqie, Jimly dan Ali Safaat, *Teori Hans Kelsen Tentang Hukum* .Jakarta: Setjen & Kepaniteraan MK-RI, 2006), 110; M.D.A. Freeman Lloyd’s, *Introduction to Jurisprudence* (London: Sweet & Maxwell. Ltd., 1994.
- Ashaqar, Muh}ammad Sulaiman Abdullah al-. *al-Futya wa Manahij al-Ifia: Babth al-Usuli* . Kuwait; Maktabah al-Manar al-Islamiyah, 1986.
- Barlinti, Yeni Salma. *Kedudukan Fatwa Dewan Syariah Nasional Dalam Sistem Hukum Nasional Indonesia*. Disertasi, UI Jakarta, 2010.
- Bowen, John R. .You May Not Give it Away: How Social Norms Shape Islamic Law In Contemporary Indonesian Jurisprudence. *Islamic Law and Society*, Vo.

- 5 No. 3, *The Islamic Inheritance System* (1998). Brill. <http://www.jstor.org/stable/3399265>. Diakses 3/11/2011.
- Chaer, Abdul. *Morfologi Bahasa Indonesia : pendekatan proses*. Jakarta: Rineka Cipta, 2008.
- Dahlan, Abdul Azis (ed.), *Ensiklopedi Hukum Islam* jilid I. Jakarta: Ichtiar Baru Van Hoeve, 2000.
- David, S. Powers, *Fatwas as Sources for Legal and Social History: as Dispute Over Endowment Revenues from Fourteenth-Century Fez* dalam Howard M. Federspiel, *An Anthology Of Islamic Studies* Vol. III. Canada: McGill Institute of Islamic Studies, 1996.
- Dusuki, Asyraf Wajdi (ed.) *Sistem Keuangan Islam : Prinsip dan Operasi*. Jakarta: Rajagrafindo Persada, 2015.
- Etzioni, Eva Halevy dan Amitai Etzioni. *Social Change: Sources, Patterns, and Consequences*. New York: Basic Book, 1973.
- Feener, Michael R. "Indonesian Movements for the Creation of a National Madhhab." *Islamic Law and Society*, Vol.9, No.1 (2002). Brill. <http://www.jstor.org/stable/3399202>. accessed 3/11/2011;
- Friedmann, W. . *Teori dan Filsafat Hukum, Idealisme Filosofis dan Problema Keadilan*. Jakarta: Rajawali, 1990.
- Garas, Samy Nathan; Chris Pierce, "Shari'a supervision of Islamic financial institutions", *Journal of Financial Regulation and Compliance*, Vol. 18 Issue: 4 (2010), pp.386-407, <https://doi.org/10.1108/13581981011093695>
- Hallaq, Wael B. . "From *Fatwas* to *Furu*: Growth and Change in Islamic Substantive Law" dalam Howard M. Federspiel (ed.), *An Anthology of Islamic Studies* Volume II. Montreal: Mc Gill Institute of Islamic Studies, 1996.
- Hamsin, Muhammad Khairudin. *Fatawa al-Majami al-Fiqhiyah al-Indunisiyah: Tahlil wa Dirasah Usuliyah*. Disertasi, Jamiah Umm Dirman al-Islamiyah, Khartum, 2008).
- Hejazziey, Djawahir. *Politik Hukum Nasional Tentang Perbankan Syariah di Indonesia*. Disertasi: UIN Syahid Jakarta, 2010.
- Hasanudin, Konsep dan Standar Multi Akad Dalam *Fatwa* Dewan Syariah Nasional Majelis Ulama Indonesia. Disertasi, UIN Syarif Hidayatullah Jakarta, 2008.
- Hasanudin, "Konsep dan Standar Multi Akad dalam *Fatwa* Dewan Syariah Nasional Majelis Ulama Indonesia (DSN-MUI)." Disertasi Sekolah Pasca Sarjana UIN Syarif Hidayatullah, 2008.
- Hooker, M.B. . terj., *Islam mazhab Indonesia: Fatwa-Fatwa dan Perubahan Sosial*. Jakarta: Teraju, 2002.
- Hooker, M.B. . *Indonesian Syariah: Defining a National Scholl of Islamic Law* Pasir Panjang: Institute of South-East Asian Studies, 2008.
- Ibn Manzur, *Lisan al-Arab* Juz 15. Beirut: Dar Sadir, t.th.
- Jakob Skovgaard-Petersen, "A Typology of State Muftis" dalam Yvonne Yazbeck

- Haddad and Barbara Freyer Stowasser, *Islamic Law and the Challenges of Modernity*, (Maryland: AltaMira Press, 2004), 94-95.
- Karni, Asrori S. "Problem Konseptual Otoritas Kepatuhan Syariah (*Shariah Compliance*) dalam Regulasi Perbankan Syariah," Tesis: UI, 2010.
- Laffan, Michael. "The *Fatwa* Debated? Shura in One Indonesian Context." *Islamic Law and Society*. Vo. 12. No. 1. *Fatwas in Indonesia* (2005). Brill. <http://www.jstor.org/stable/3399294>. Diakses 3/11/2011.
- Mudzhar, M. Atho. *Penerapan Pendekatan Sejarah Sosial dalam Pemikiran Hukum Islam* (makalah disampaikan dalam acara Diskusi Pusat pengkajian Islam Unisba 8 Januari 1992)
- Mudzhar, Atho. *Fatwas of the Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia 1975-1988*. Disertasi ini telah diterjemahkan dengan judul *Fatwa-Fatwa Majelis Ulama Indonesia, Sebuah Studi Pemikiran Hukum Islam di Indonesia: 1975 -1988*. Jakarta: INIS, 1993.
- Muhammad Dawis dan Hamid Sadiq, *Mu'jam Lughat al-Fuqaha*. Beirut: Dar al-Nafais, 1985.
- Ni'am, M. Asrorun .Sadd Dzariah dan Aplikasinya Dalam *Fatwa MUI* Disertasi, UIN Syahid, 2008.
- Qaradawi, Yusuf al-. *al-Fatawa Baina al-Indibat wa at-Tasayyub*. Kairo: Dar al-Sahwah lil Nashir wa al-Tawzi, 1988.
- Shaukati, Mughees. *General Preception of Fatwa and Its Role in Islamic Finance* Kualalumpur: INCIEF, 2009.
- Sami al-Suwalem, *Hedging In Islamic Finance*. Jeddah: Islamic Development Bank, 2006.
- Soekanto, Soerjono. dan Sri Mamudji, *Penelitian Hukum Normatif*. Jakarta: Rajawali Press, 2013.
- Shihab, Quraisy. "Era Baru, *Fatwa* Baru" dalam H.B Hooker, *Islam Mazhab Indonesia*. Bandung: Mizan, 2003.
- Syarifuddin, Amir. *Ushul Fiqh Jilid II*. Jakarta: Kencana Prenada Media Group, 2011.
- Sopa, Sertifikasi halal MUI: Studi Halal MUI terhadap produk makanan, obat-obatan dan kosmetika. Disertasi, UIN Syarif Hidayatullah Jakarta, 2008.
- Taufiki, Muhammad. Penerapan Konsep Ijtihad Tatbiqi dalam *Fatwa MUI: Kajian Terhadap Fatwa 1997 – 2007*, Disertasi, UIN Syarif Hidayatullah, (2008).
- Tobibatus'adah, *Fatwa-Fatwa MUI 2005: Otoritas Keagamaan Versus Liberalisasi Pemikiran Islam Pasca Orde Baru*. Disertasi, UIN Syarif Hidayatullah Jakarta, 2009
- Wuzarah al-Awqaf wa al-Shu'un al-Islamiyah al-Kuwait, *al-Mawsu'ah al-Fiqhiyah* Juz 32. Kuwait: Dar al-Sahwah, 1995.

Sofian Al Hakim

UIN Sunan Gunung Djati Bandung, Indonesia

E-mail: Sofyanalhakim@uinsgd.ac.id