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STRENGTHENING THE DSN-MUI FATWA AS A LEGAL SOURCE IN RESOLVING SHARIA ECONOMIC DISPUTES IN INDONESIA

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Abstract

This study, titled *"Strengthening the DSN-MUI Fatwa as a Legal Source within the Indonesian Legislative System in Resolving Sharia Economic Disputes"*, is driven by concerns over the lack of binding legal authority of DSN-MUI (National Sharia Council of the Indonesian Ulama Council) fatwas. Despite their valuable content and relevance to Islamic economic practices, these fatwas are not yet formally recognized as binding legal sources. To address this issue, the research raises two main questions: (1) What is the current legal status of DSN-MUI fatwas within Indonesia's regulatory system in resolving sharia economic disputes? and (2) How can these fatwas be strengthened to gain formal legal recognition?. Using a qualitative-normative method through literature review, the study examines both fatwas that have been adopted into legislation and those that have not. The findings reveal that DSN-MUI fatwas, in practice, lack binding legal force in Sharia economic dispute resolution. The study also explores ways to enhance their legal standing. The analysis concludes that: (1) DSN-MUI fatwas do not yet have binding legal power, and their application still faces challenges in legal practice; and (2) Their legal authority can be strengthened by collaborating with state institutions, such as the Supreme Court, to issue judicial regulations (PERMA) that formally incorporate DSN-MUI fatwas. This approach would provide them with stronger legal legitimacy in Indonesia's regulatory framework.

Keywords: *DSN-MUI Fatwa, Strengthening of DSN-MUI Fatwas, DSN-MUI Fatwa as a Source of Law, Sharia Economic Disputes.*

A. INTRODUCTION

The legal foundation of Indonesia is based on Pancasila, the state ideology, and the 1945 Constitution (UUD 1945), which serves as the supreme constitutional framework. Pancasila functions as the philosophical foundation that underpins all legislation in Indonesia, while the 1945 Constitution serves as the highest legal authority, regulating the structure of state governance, citizens' rights and obligations, and guidelines for state administration.

The hierarchy of laws and regulations

in Indonesia is regulated under Law Number 12 of 2011 concerning the Formation of Laws and Regulations. The order of this hierarchy from the highest level is: The 1945 Constitution of the Republic of Indonesia (UUD 1945), People's Consultative Assembly Decrees (Ketetapan MPR), Laws/Government Regulations instead of Laws (Undang-Undang/Peraturan Pemerintah Pengganti Undang-Undang), Government Regulations (Peraturan Pemerintah), Presidential Regulations (Peraturan

Presiden), Provincial Regional Regulations (Peraturan Daerah Provinsi), and Regency/Municipal Regional Regulations (Peraturan Daerah Kabupaten/Kota).

Indonesia, as a country with the largest Muslim population in the world, has a responsibility to develop an economic and legal system that aligns with Sharia values. Since the enactment of several regulations supporting sharia economic practices, such as Law Number 21 of 2008 concerning Islamic Banking and Law Number 33 of 2014 concerning Halal Product Guarantees, the role of the National Sharia Council - Indonesian Ulema Council (DSN-MUI) has become increasingly important as an institution issuing fatwas in the Islamic financial sector.

In addition, the implementation of the Sharia system or economy through fatwas is of great importance to Muslims, considering that economic transactions, whether consumptive or distributive, must be by the will of Allah SWT. This is because such commandments have been practiced since the first prophethood on earth, beginning with the existence of Prophet Adam AS, up to the final prophethood, that of Prophet Muhammad SAW.¹

The fatwas issued by the DSN-MUI serve as a primary foundation for the development of Islamic financial products and services in Indonesia. These fatwas not only carry religious value but also play a strategic role as a reference in the formulation of legislation related to Islamic economics. DSN-MUI fatwas are considered one of the sources of material law used by authorities, such as the Financial Services Authority (OJK) and Bank Indonesia (BI), in drafting regulations concerning Islamic banking and finance. However, despite being recognized in practice, the legal status of DSN-MUI fatwas within the national legal framework remains limited due to their non-binding

nature.

DSN-MUI fatwas essentially have a clear and strong position as regulations governing the mechanisms of the Sharia economy. However, in practice, in the resolution of Sharia economic disputes in court, DSN-MUI fatwas cannot bind judges in making decisions, as these fatwas are not formal sources of legislation under Law Number 12 of 2011 concerning the Formation of Legislation.

The importance of this research can be seen from several fundamental reasons. First, in the hierarchy of legislation in Indonesia, as regulated by Law Number 12 of 2011 concerning the Formation of Legislation, fatwas are not included in the category of regulations that have binding legal force. This has resulted in a gap in the harmonization between Sharia regulations based on fatwas and national positive law. DSN-MUI fatwas are often accommodated through technical regulations derived from other legislative instruments, such as Bank Indonesia regulations or OJK regulations, but they do not hold a formal status as independent legal regulations.

Second, DSN-MUI fatwas are often regarded merely as interpretations of sharia principles without strong executive force. In fact, strengthening the role of these fatwas is necessary to ensure that the regulations formulated truly reflect the aspirations and values of Sharia, which form the foundation of Islamic economic practices in Indonesia. Recognizing DSN-MUI fatwas as a formal source of law would provide greater legitimacy, thereby enabling more consistent implementation and reducing legal uncertainty within the Sharia economic sector.

Third, many countries with pluralistic legal systems, such as Malaysia, have successfully integrated sharia fatwas into their national legal frameworks. In Malaysia, fatwas issued by the Sharia Council are recognized as binding decisions

¹ Luluk Latifah, Isma Swadjaja, Dian Berkah, Muridah Isnawati, Warsidi. *"The Existence of Islamic Economic Thought in The Time of The Prophet*

Adam". Jurnal Ilmiah Ekonomi Islam, 9(02), 2023, hal. 7, <https://jurnal.stie-aas.ac.id/index.php/jie>

in the regulation of Islamic banking and financial systems.² Indonesia can learn from this experience to further formalize the position of DSN-MUI fatwas within the national legal framework, thereby enhancing public and investor confidence in legal certainty within the sharia sector.

Fourth, with the growing development of Islamic financial products and services in Indonesia, the need for clear and strong regulation has become increasingly urgent. Strengthening the status of DSN-MUI fatwas as a source of legislative regulation will help ensure that all actors in the Islamic economy, both institutions and individuals, have a clear and accurate legal reference to guide their activities. This will not only enhance the efficiency of the Islamic economy but also strengthen the overall integrity of the national financial system.

Therefore, research on strengthening DSN-MUI fatwa as a source of legislative regulation becomes highly important. This research is expected to provide solutions to various regulatory challenges faced by the Islamic economic sector in Indonesia, while also offering a model for better integration of fatwas into the national legal system.

B. RESEARCH METHODS

Research Method is a way of working used to understand a problem and to find solutions to that problem based on a specific method. For the research to proceed effectively and for its results to be scientifically accountable, a systematic research method is required.

This research is a qualitative-normative study using a library research approach (literature review), which is descriptive and tends to use analytical methods that emphasize process and meaning (subjective perspective).³ In this case, the library research approach is focused on documents produced by

institutions that are competent and authorized regarding the data being studied.

Qualitative research emphasizes the depth of data obtained by the researcher. The deeper and more detailed the data collected, the better the quality and results of the research.⁴

This research is conducted by examining DSN-MUI fatwas that have been incorporated into and those not included in legislative regulations, thereby identifying a clear pattern: in reality, DSN-MUI fatwas do not have binding legal force in the resolution of Sharia economic disputes. In addition, the researcher also explores possible ways to strengthen the position of DSN-MUI fatwas as a binding source of legislative regulation.

C. RESEARCH FINDINGS AND ANALYSIS

1. The Position of DSN-MUI Fatwa within the Indonesian Legislative Regulatory Framework in the Resolution of Sharia Economic Disputes

Some legal experts question the position of the National Sharia Council (DSN-MUI) fatwa as the operational basis for Islamic banking, especially when viewed about Law Number 12 of 2011 concerning the Formation of Legislation. According to the provisions of Article 7 on the hierarchy of legislation, fatwas are not included within the established hierarchy of legislative regulations. Meanwhile, the operations of Islamic banking products are fundamentally based on DSN-MUI fatwas.

Based on Decree (SK) Number Kep/MUI/II/1999 dated February 10, 1999, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) was officially established, with the following main tasks and functions:

1. **Issuing fatwas** related to Sharia economics as a guideline for

² Isa Ansori, Kedudukan Fatwa di Beberapa Negara Muslim (Malaysia, Brunei Darussalam dan Mesir), Jurnal Analis, Volume 17, Nomor 1, Juni 2017, hal. 142-143

³ Nur Hasanah, Metode Penelitian Kepustakaan, Malang: Litnus, 2023, hal. 1-5.

⁴ Kriyantono, Rachmat, Teknik Praktis Riset Komunikasi, (Jakarta: Prenada, 2006), h. 35

practitioners and regulators in the Islamic financial industry.

2. **Issuing recommendations, certifications, and Sharia approval** for Islamic financial institutions and businesses to ensure compliance with Sharia principles.
3. **Conducting sharia** oversight of products and services in financial institutions and Islamic businesses through the Sharia Supervisory Board (Dewan Pengawas Syariah/DPS).

The existence of the DSN-MUI plays a crucial role in ensuring that all Islamic economic activities in Indonesia are carried out by sharia principles, thereby providing legal certainty for Muslims in conducting lawful and blessed economic transactions.

Based on its duties and functions, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) has the authority to regulate products and services of Islamic financial institutions and businesses, namely:

1. **Issuing fatwas** that are binding on the Sharia Supervisory Board (Dewan Pengawas Syariah/DPS) in each Islamic financial institution and serving as a legal basis for relevant parties in taking action.
2. **Issuing fatwas** that serve as a foundation for the formulation of regulations by competent authorities, such as the Ministry of Finance and Bank Indonesia.
3. **Providing and revoking recommendations** regarding candidates for members of the Sharia Supervisory Board (Dewan Pengawas Syariah/DPS) who will serve in Islamic financial institutions and businesses.
4. **Inviting experts** to provide input in the discussion of Islamic economics, including from monetary authorities and financial

institutions, both domestic and foreign.

5. **Issuing warnings** to Islamic financial institutions that deviate from fatwas issued by the DSN-MUI.
6. **Proposing corrective actions to the relevant authorities** if Islamic financial institutions fail to heed the warnings issued.

With these authorities, the DSN-MUI plays a central role in ensuring sharia compliance within the Islamic financial and business sectors in Indonesia, as well as guaranteeing that all sharia economic transactions are carried out by established principles.

The enactment of Law Number 10 of 1998 marked the initial milestone in the development of Islamic banking in Indonesia, even though the term "sharia" was not explicitly mentioned in the law. However, its provisions on profit-sharing principles indicated room for banking practices by Sharia principles. Sharia banking was only explicitly regulated under Law Number 21 of 2008 concerning Islamic Banking. This law clearly states that sharia principles in banking activities must be based on fatwas issued by an institution authorized to issue sharia rulings, namely, the National Sharia Council of the Indonesian Ulema Council (DSN-MUI). With the enactment of Law No. 21 of 2008, Islamic banking regulation in Indonesia became stronger, gained a clear legal basis, and affirmed the role of the DSN-MUI in issuing fatwas that serve as operational guidelines for Islamic financial institutions.⁵

The issue that subsequently arose concerned which institution had the authority to issue such fatwas. The regulators responsible for overseeing Islamic financial institutions at the time, Bank Indonesia (BI) and the Ministry of Finance, clearly could not exercise authority in the field of sharia. These two

⁵ Pasal 12 ayat (1) UU Nomor 21 Tahun 2008 tentang

government agencies did not have the competence to directly formulate Sharia principles from religious texts into regulations. Therefore, Article 26 stipulates that the institution authorized to issue fatwas concerning sharia principles is the Indonesian Ulema Council (MUI), which in practice is carried out by the National Sharia Council (DSN).⁶

Based on this, the understanding of DSN fatwas must be viewed as a mandate provided by legislation, specifically Law Number 21 of 2008 concerning Islamic Banking. From this perspective, DSN fatwas possess recognized legal standing and are considered equivalent to the substance contained in Law Number 21 of 2008. If this is not understood in such a way, there would be no distinction between conventional banking and Islamic banking. The main difference between the two systems lies in the application of sharia principles, and the institution tasked with ensuring the implementation of these sharia principles is the MUI. If the institution authorized to guarantee sharia compliance is not legally recognized, then essentially, its existence is negated.⁷

The Religious Court in Indonesia currently holds absolute jurisdiction in deciding Islamic economic disputes. In practice, economic conflicts often involve cases of *wanprestasi* (breach of contract), which refers to the inability or negligence of one party in fulfilling obligations agreed upon in a contract. One example of a *wanprestasi* case handled by the Yogyakarta Religious Court is the dispute between an Islamic financial institution or Baitul Maal wat Tamwil (BMT), and one of its customers. In resolving this dispute, the court decision numbered 386/Pdt.G/2021/PA.YK has acquired permanent legal force (*kekuatan hukum tetap*) and is binding for all involved parties.

Generally, the dispute involved the Sharia Financial Services Cooperative (Koperasi Jasa Keuangan Syariah/KJKS) BMT Berkah Al-Fath Mulia, a legal entity in the form of a cooperative based in Pesageni Village, RT.002, RW.001, Gunung Wungkal Subdistrict, Pati Regency, Central Java Province (Defendant), and Fahmi Akbar Idries Bin Ahmad Mudjib (Plaintiff). The lawsuit concerned *wanprestasi* and guarantee liability (*borgtocht*).

As stated in the Yogyakarta Religious Court Decision Number 386/Pdt.G/2021/PA.YK, the disputed act of negligence involved the defendant's failure to fulfill payment obligations and other provisions stipulated in Mudharabah Agreement Number 03 dated June 10, 2016, and the Guarantee Agreement Deed (*Borgtocht*) Number 04 dated June 10, 2016. Both documents were executed before Notary Ahmad Yubaidi, S.H., S.Pd., in Yogyakarta. Based on this, Fahmi Akbar Idries Bin Ahmad Mudjib, as the aggrieved party, had the right to file a lawsuit regarding this dispute with the Yogyakarta Religious Court.

In various court decisions, such as Decision Number 386/Pdt.G/2021/PA.YK, 1232/Pdt.G/2022/PA.JP, and 1399/Pdt.G/2022/PA.Sda judges have considered DSN-MUI fatwas as a basis for adjudicating Islamic economic disputes. This indicates that fatwas play a significant role in the practice of Islamic economic judiciary in Indonesia. However, if referred to Law Number 12 of 2011 concerning the Formation of Legislation, DSN-MUI fatwas are not normatively categorized as legally binding provisions. This gives rise to discourse regarding the position of fatwas within the national legal system, particularly in the context of resolving Islamic economic disputes. Although they do not possess binding force in the same

⁶ Pasal 26 ayat (2) UUPS 21 Tahun 2008, "prinsip syariah sebagaimana dimaksud ayat Satu difatwakan oleh Majelis Ulama Indonesia (MUI)"

⁷ Imron Rosyadi, *Jaminan Kebendaan Berdasarkan*

Akad Syariah (Aspek Perikatan, Prosedur Pembebanan, dan Eksekusi). Depok: Kencana. 2017, hlm 30-34;

manner as laws or other regulations, fatwas remain the primary reference in determining Sharia compliance in various transactions and disputes within Islamic financial institutions.⁸ This situation creates a lack of legal certainty when disputes arise, leading to legal uncertainty in the resolution of Islamic economic disputes.

DSN-MUI fatwas can have valid and binding legal force for Islamic Financial Institutions (LKS) due to their reference in Article 26 of the Islamic Banking Law. According to this provision, all business activities, including Islamic financial products and services, must be based on Sharia principles as determined by fatwas issued by the Indonesian Ulema Council (MUI). These fatwas then serve as the basis for the formulation of Bank Indonesia Regulations (PBI), which ensure compliance with sharia principles within the banking industry. In addition, Bank Indonesia has established a Sharia Banking Committee as part of the mechanism for supervision and implementation of regulations. The provisions regarding the formation procedures, membership, and duties of this committee are further regulated through Bank Indonesia Regulations (PBI), as outlined in paragraph (4) of Article 26 of the Islamic Banking Law. Thus, DSN-MUI fatwas do not merely serve as moral or ethical guidelines, but also function as a foundation for Islamic banking regulation in Indonesia.⁹

Article 26 of the Islamic Banking Law can be understood as the legal basis that DSN-MUI fatwas with binding authority, making them function like positive law. These fatwas serve as a foundation for the formulation of Bank Indonesia Regulations (PBI) that govern the

operations of Islamic Financial Institutions (LKS). The connection between DSN-MUI fatwas and regulations issued by financial authorities, such as Bank Indonesia, highlights the significance and strategic role of the fatwa-issuing institution within Indonesia's Islamic economic legal system. The existence of the DSN-MUI ensures that every LKS operates in accordance with Sharia principles, while also supporting the development and legitimacy of Islamic financial institutions within the applicable legal framework.¹⁰

In proceedings at the Religious Court, judges adjudicating Islamic economic disputes must identify, observe, and take into account the religious values reflected in the law and the principles of justice upheld in society. This is stipulated in Article 5, paragraph (1) of Law Number 48 of 2009 concerning Judicial Authority. DSN-MUI fatwas can serve as a basis for judicial consideration because they function as guidelines applicable to Islamic Financial Institutions (LKS) and reflect the religious values in law and justice applied in Islamic economic transactions and contracts (*akad*). This view is supported by Yusril Ihza Mahendra, who states that Islamic law is an integral part of societal life.¹¹

In resolving Islamic-based economic disputes in the Religious Court, judges should include reasons based on Sharia principles as the foundation for their decisions. This requirement is regulated under Supreme Court Regulation (Perma) Number 14 of 2016 concerning the Procedures for Resolving Sharia Economic Cases. The sharia principles applied encompass various concepts in Islamic economics, such as profit-sharing principles (*mudharabah* and *musyarakah*),

⁸ Sovia Hasanah, "Kedudukan Fatwa MUI Dalam Hukum Indonesia," 2016, <https://www.hukumonline.com/ klinik/a/kedudukan-fatwa-mui-dalam-hukum-indonesia-lt5837dfc66ac2d>.

⁹ Warsidi, Strategi Pemasaran Produk Bank Syariah, Yogyakarta: Zahir Publishing, 2020

¹⁰ Ahmad Arief rahman Saidi, Warsidi, Indonesia One Search, Implementasi Fatwa-fatwa DSN-MUI Pada Pembiayaan Dana Talangan Haji

(Studi Kasus Pada KSPPS BTM Mulia Babat-Lamongan), link: <https://onesearch.id/Record/IOS5223.article-5234?widget=1>

¹¹ Fian Firatmaja, "Hukum Islam Adalah The Living Law," [Republika.co.id](https://www.republika.co.id/), 2016, https://www.republika.co.id/ amp_ version/oiope6301.

sale principles (*murabahah*, *salam*, and *istishna'*), lease principles (*ijarah*), and agency or guarantee principles (*wakalah*, *kafalah*, and *hawalah*). By incorporating these principles into legal reasoning, judges can ensure that their decisions align with Sharia values and reflect justice within the framework of Islamic economics.¹²

Therefore, it can be concluded that MUI fatwas are not inherently binding as positive law, unless they are incorporated into official regulations by the competent authorities. In the context of Islamic economics, DSN-MUI fatwas often serve as the basis for regulations governing Islamic banking and finance, thereby acquiring legal force that must be adhered to by Islamic financial institutions and actors within the sector. Thus, it can be concluded that MUI fatwas are not legally binding on citizens in general, but may become binding when formally integrated into legislative regulations.

2. Strengthening DSN-MUI Fatwa as a Source of Legislative Regulation in Indonesia in the Resolution of Sharia Economic Disputes

Fatwas issued by the Indonesian Ulema Council (MUI) have been widely adopted into various legislative regulations. However, under Law Number 13 of 2022, which amends Law Number 12 of 2011 on the Formation of Legislation (UU P3), MUI fatwas do not fully meet the definition of *taqin* or formal legislative regulation. A valid legislative regulation is a written rule that contains legally binding norms applicable to the general public and is enacted by a state institution or authorized official through procedures stipulated by national law. To date, MUI fatwas remain limited to being part of the *menimbang* (consideration) section or serving as oral references for lawmakers in drafting legal

norms within legislation. Therefore, in Indonesian legal practice, for MUI fatwas to carry stronger legal force, they must be concretized into generally binding norms, as with other legislative regulations.

Constitutional Judge Wahiduddin Adams emphasizes that discussions regarding MUI fatwas cannot be separated from the position of Islamic Law in the legislative process in Indonesia. According to him, although MUI fatwas are part of Islamic legal thought, many of them have been adopted into various regulations. However, to this day, MUI's involvement in the drafting of legislation is still categorized as public participation, as stated in Article 96 of Law Number 13 of 2022. This article states that parties involved in the formation of regulations include individuals or groups directly affected by or having an interest in the content of the draft regulation. Thus, since its establishment in 1975, MUI has maintained the status of a civil society organization.¹³

Wahiduddin emphasizes that incorporating MUI fatwas into legislative regulations that carry sanctions, from Acts (Undang-Undang) down to Regional Regulations (Peraturan Daerah) and Village Regulations (Peraturan Desa)—is not an easy task. Given the large number of fatwas issued, whether based on development needs or specific requests, MUI should actively participate in overseeing the rule-making process, from the planning stage through to evaluation. This is intended to ensure that MUI fatwas are adopted in a comprehensive and concrete manner within the legislative framework. Furthermore, in drafting regulations, the language used must be adapted to state legal terminology rather than fiqh-based language, so as to align more closely with the essence and

¹² Rahman Ambo, *Fiqih Ekonomi Dan Keuangan Syariah Antara Realits Dan Kontekstual*, ed. Muhammad Kamal Zubai, Cet 1 (Yogyakarta: TrustMedia Publishing, 2016).

¹³ Sri Pujianti, "BI: Fatwa DSN MUI Penentu Produk Perbankan Syariah" Mahkamah Konstitusi RI, <https://www.mkri.id/index.php?page=web.Berita&id=18123#> diakses tanggal 30 November 2024.

interpretation of MUI fatwas within the national legal system.¹⁴

Rosalia Suci Handayani states that Bank Indonesia (BI), as the regulator and supervisor of Islamic banking, does not have the authority to directly formulate sharia principles in the regulations it issues. Therefore, fatwas issued by the National Sharia Council of the Indonesian Ulama Council (DSN-MUI) constitute one of the main requirements in establishing Islamic banking products, as stipulated by law. Accordingly, these fatwas carry binding authority in the development and operational implementation of Islamic banking. This statement was delivered by Rosalia Suci Handayani from Bank Indonesia during the continuation hearing concerning the material judicial review of Law Number 21 of 2008 on Islamic Banking against the 1945 Constitution of the Republic of Indonesia, held on Monday, April 11, 2022. In Case Number 65/PUU-XIX/2021, Rega Felix, as the petitioner, submitted a judicial review challenging Article 1, paragraph 12, and Article 26 paragraphs (1), (2), and (3) of the Islamic Banking.¹⁵

Following the previous statement, Rosalia explained that based on Law Number 12 of 2011 concerning the Formation of Legislation, every regulation issued by Bank Indonesia (BI) is part of the recognized legislative framework and carries binding legal force, including those governing Islamic banking activities. In practice, all business activities in this sector must be based on Sharia principles, as determined by fatwas issued by the Indonesian Ulama Council (MUI), which are then integrated into the regulations issued by BI.

Furthermore, Rosalia stated that since the enactment of the Islamic Banking Law, Bank Indonesia has issued various

regulations related to Islamic banking. In the process of drafting and issuing these regulations, Bank Indonesia involved the Sharia Banking Committee and the National Sharia Council of the Indonesian Ulama Council (DSN-MUI) to ensure that the content of the regulations complies with the applicable sharia principles.¹⁶

a. DSN-MUI Fatwas Incorporated into BI and OJK Regulations

The existence of DSN-MUI fatwas within the Indonesian legal system gains legitimacy as a source of law because they have been recognized as part of regulatory provisions in governing Islamic banking and non-bank financial industries. This can be examined through Article 8, paragraph (2) of Law Number 12 of 2011 concerning the Formation of Legislation, which affirms that Bank Indonesia regulations are included within the hierarchy of legislation. Accordingly, these regulations possess binding normative force and must be obeyed and implemented as valid sources of law.

Furthermore, the presence of the Financial Services Authority (OJK), which is granted authority under Article 55 of Law Number 21 of 2011, plays a role in regulating and supervising financial services activities in Indonesia. In conclusion, the existence of DSN fatwas from the perspective of *fiqh siyasah* represents a mechanism that promotes synergy between the concentric circle theory and the twin brother concept, or *siyasah syar'iyah*, within the context of the Unitary State of the Republic of Indonesia, based on the 1945 Constitution as the supreme constitutional framework.¹⁷

In addition, within the framework of *fiqh siyasah*, DSN-MUI fatwas play a role in realizing justice, mercy, public interest (*maslahah*), and wisdom (*hikmah*). These

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Idris Ismail, "Penyerapan Fatwa Dewan Syariah Nasional (Dsn-Mui) Dalam Sistem Peraturan

Perundangan (Kajian Fiqh Siyasah)", Tesis UIN Sultan Syarif Kasim Riau, 2017. diakses pada tanggal 30 November 2024, <https://inlisite.uin-suska.ac.id/opac/detail-opac?id=11235>

fatwas aim to meet societal needs within the Islamic banking industry and the broader non-bank financial sector in Indonesia.

From a legal policy perspective, various theories such as *Reseptio in Complexu* by L.W.C. Van den Berg, *Reseptio A Contrario* by Hazairin, *Sociological Jurisprudence* by Eugen Ehrlich, *Siyasah Syar'iyah* according to Abdul Wahab Khallaf, and the *Concentric Circle Theory* proposed by Tahir Azhari emphasize the importance of synergy between religion, law, and the state in Indonesia. Within this context, Law Number 21 of 2008 concerning Islamic Banking carries normative binding force, enabling the effective implementation of Sharia compliance principles. In addition, regulations issued by Bank Indonesia (BI) and the Financial Services Authority (OJK) serve as integral components in supporting the implementation of Islamic banking regulations.¹⁸

b. PERMA as a Solution for Strengthening DSN-MUI Fatwas

The diverse legal understandings mentioned above have led to debate over the implementation of DSN-MUI fatwas, which are widely recognized for their benefits in the field of Islamic economics in Indonesia. On one hand, DSN-MUI fatwas do not possess binding legal force because they are not part of the formal legislative regulations. On the other hand, certain DSN-MUI fatwas have been accommodated in the form of Bank Indonesia Regulations and Financial Services Authority (OJK) Regulations. Furthermore, based on the implementation of Article 26 of Law Number 21 of 2008 concerning Islamic Banking, DSN-MUI fatwas are considered to hold a strong position and are expected to be followed by the relevant parties.

The implementation of DSN-MUI fatwas in the legal field continues to be surrounded by debate, limiting their full

applicability, particularly in resolving Islamic economic disputes in Indonesia. For judges handling Islamic economic cases, DSN-MUI fatwas can easily be disregarded because they are not part of formal legislative regulations. In the researcher's view, this situation must be addressed in order to uphold legal certainty, justice, and public benefit. This can be achieved by strengthening the position of DSN-MUI fatwas so they are recognized as valid legislative regulations, specifically through the enactment of a Supreme Court Regulation (*Peraturan Mahkamah Agung/PERMA*).

The Indonesian Ulema Council (MUI) must carefully identify opportunities to strengthen its fatwas, particularly those issued by the National Sharia Council (DSN) in the field of Islamic economics. So far, DSN-MUI fatwas have only been partially accommodated through Bank Indonesia Regulations (PBI) and Financial Services Authority Regulations (POJK), which are essentially at the administrative regulatory level. Meanwhile, in the resolution of Islamic economic disputes, DSN-MUI fatwas hold no binding legal force. Therefore, the MUI should engage in dialogue or collaboration with state institutions authorized to issue legislative regulations, specifically, the Supreme Court, through the issuance of a Supreme Court Regulation.

One type of legislation announced in the *Berita Negara Republik Indonesia* (State News of the Republic of Indonesia) is the Supreme Court Regulation (*PERMA*). PERMA is a regulation containing procedural law provisions, as outlined in the Appendix of the Chief Justice of the Supreme Court Regulation Number 57/KMA/SK/IV/2016, which amends the previous Chief Justice of the Supreme Court Regulation Number 271/KMA/SK/X/2013 concerning the Guidelines for the Formulation of Supreme Court Policies of the Republic of

¹⁸ Ibid.

Indonesia.¹⁹

The Supreme Court Regulation (*PERMA*) is a form of legislation formulated based on three primary laws, namely:

1. Article 79 of Law Number 14 of 1985 concerning the Supreme Court, which states that the Supreme Court has the authority to issue regulations necessary for the smooth operation of the judiciary in the event of legal vacuums in existing laws. This provision reflects the additional function of the Supreme Court, beyond its primary role in cassation and judicial review of regulations below the level of law against higher laws, as stipulated in Article 24A, paragraph (1) of the 1945 Constitution.
2. Article 8, paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, which states that one type of legislation is regulations issued by the Supreme Court. This provision affirms the authority of the Supreme Court to formulate regulations, particularly to address legal vacuums in judicial administration.
3. Article 4, paragraph (2) of Law Number 48 of 2009 concerning Judicial Authority, which mandates that courts must assist justice seekers and overcome obstacles and barriers in order to realize a simple, fast, and low-cost judicial process.²⁰

With this legal basis, *PERMA* functions as a legal instrument that ensures the smooth operation of the judicial system, particularly in matters not yet comprehensively regulated by higher laws.

c. The Formation Process of *PERMA*

and Its Legal Aspects

The Supreme Court Regulation (*PERMA*) was first issued in 1954 and has continued to develop until today. The highest number of *PERMA*s produced in a single year occurred in 2016, with a total of 14 regulations. However, the formulation of *PERMA* is not quantity-oriented, but rather based on urgency and the legal needs of the judiciary and society.

From an administrative perspective, the Legal and Public Information Bureau of the Supreme Court (*Biro Hukum dan Humas Mahkamah Agung*) has the authority over the drafting and documentation process of *PERMA*, as stipulated in the Regulation of the Secretary of the Supreme Court Number: MA/SEK/07/SK/III/2006 concerning the Organization and Work Procedures of the Supreme Court Secretariat of the Republic of Indonesia.

The Legal and Public Information Bureau of the Supreme Court (*Biro Hukum dan Humas MA*) is responsible for:

1. Guidance and communication regarding the activities of the Supreme Court to the public.
2. Management of the library, technology, and information systems within the Supreme Court environment.
3. Documentation and distribution of regulations in force within the Supreme Court.

Thus, *PERMA* has become a continuously evolving legal instrument, formulated based on the real needs within the judicial system of Indonesia.²¹

The Legislative Regulation Division under the Head of the Legal and Public Information Bureau has the main tasks of: collecting and processing legislation, drafting regulatory concepts as legal reference materials, and managing legislative documentation. This division

¹⁹ Riki Perdana Raya Waruwu, "Penerapan Asas Fiksi Hukum dalam *PERMA*", Mahkamah Agung RI, <https://jdih.mahkamahagung.go.id/berita-detail/penerapan-asas-fiksi-hukum-dalam-perma>

diakses 30 November 2024

²⁰ Ibid.

²¹ Ibid.

consists of three main subdivisions, namely:

1. The Legislative Drafting Subdivision, responsible for the preparation and drafting of legal texts.
2. The Legal Document Network System Subdivision, which manages the information system and legal regulation documentation network within the Supreme Court environment.
3. The Supreme Court Policy Administration Subdivision, which handles administrative aspects related to policies and regulations issued by the Supreme Court.²²

With this structure, the Legislative Regulation Division plays a crucial role in ensuring the smooth process of regulation and legal documentation within the Supreme Court.

The drafting procedure of the Supreme Court Regulation (*PERMA*) begins with several key stages, namely:

1. Formation of the Working Group (POKJA). The Chief Justice of the Supreme Court issues a Decree (Surat Keputusan/SK) establishing the Working Group (Tim POKJA). This team is typically led by a Supreme Court Justice and consists of judges, structural officials, and relevant functional officers.
2. Discussion of the Draft *PERMA* (*RAPERMA*). The POKJA team prepares and discusses the draft *PERMA* (*RAPERMA*) in accordance with Chief Justice Regulation Number: 57/KMA/SK/IV/2016. This process involves various stakeholders, such as court heads, researchers, and legal practitioners, to obtain comprehensive input.
3. Submission and Discussion at the Leadership Level. Upon completion of the drafting process, the

RAPERMA is submitted to the Chief Justice of the Supreme Court for approval or rejection.

4. Leadership Meeting on *RAPERMA*. The leadership meeting discussing the *RAPERMA* involves: the Chief Justice of the Supreme Court, the Deputy Chief Justice, the Heads of Chambers, the Head of the Working Group, the Supreme Court Spokesperson, the Head of the Legal and Public Information Bureau, and other relevant stakeholders.

After receiving approval in the leadership meeting, the *RAPERMA* is then enacted into a Supreme Court Regulation (*PERMA*) and published in the State News of the Republic of Indonesia, thereby acquiring binding legal force.²³

If the Draft Supreme Court Regulation (*RAPERMA*) is approved by the Chief Justice of the Supreme Court in the aforementioned leadership meeting, the Legal and Public Information Bureau then carries out the harmonization process in accordance with the Standard Operating Procedure for Harmonization/Drafting/Formulation of Legislation Number: Bua.6, effective January 6, 2014.

After the Draft Supreme Court Regulation (*RAPERMA*) and the academic manuscript are completed, the documents are submitted to the Ministry of Law and Human Rights for official publication. This process begins with submitting the document to the Directorate General of Legislation to obtain an administrative endorsement signature. Subsequently, the publication is carried out in accordance with the provisions stipulated in Article 3 paragraph (1) of the Minister of Law and Human Rights Regulation Number 16 of 2015, which regulates the procedure for recording regulations in the State Gazette of the Republic of Indonesia (*Lembaran Negara Republik Indonesia*), Supplement

²² Ibid.

²³ Ibid.

to the State Gazette of the Republic of Indonesia (*Tambahan Lembaran Negara Republik Indonesia*), the State News of the Republic of Indonesia (*Berita Negara Republik Indonesia*), and the Supplement to the State News of the Republic of Indonesia. Initially, this publication was signed by the Minister of Law and Human Rights; however, over time, this authority has been delegated to the Director General of Legislation to streamline the administrative process before the PERMA is officially enacted.

After being officially published, the Legal and Public Information Bureau promptly conducts dissemination through the Supreme Court's Legal Documentation and Information System (*Jaringan Dokumentasi dan Informasi Hukum/JDIH*) on the official website at <https://jdih.mahkamahagung.go.id/>, ensuring nationwide accessibility. Although the obligation to publish PERMA is not specifically regulated under Law Number 12 of 2011, this step is still carried out to fulfill the principle of publicity and support the task of documenting legislation. Under the principle of legal fiction, a PERMA that has been enacted immediately becomes binding and must be adhered to by judges, litigants, and other relevant parties without the need for further notification or socialization.²⁴

Based on the above explanation, in the researcher's view, several solution-oriented steps can be taken by the Indonesian Ulema Council (MUI) to resolve the existing debates. These include strengthening DSN-MUI fatwas as valid legislative regulations by collaborating with the Supreme Court, or by participating as a member of the Working Group (*Tim POKJA*) in the drafting of PERMA. In this way, DSN-MUI fatwas that are later incorporated into PERMA will carry binding legal authority in the resolution of Islamic economic disputes in Indonesia.

Essentially, the strengthening of

DSN-MUI fatwas can be carried out through various means, including the enactment of new laws or the revision of existing laws in order to position the MUI as an institution authorized to formulate legislative regulations. However, such a process would undoubtedly be complex and present its own challenges for Islamic economic practitioners aiming to achieve the goal of granting DSN-MUI fatwas stronger legal authority.

One of the most effective and efficient steps to strengthen DSN-MUI fatwas is by establishing cooperation between the Indonesian Ulema Council (MUI) and the Supreme Court in drafting a Supreme Court Regulation (*PERMA*) that incorporates all DSN-MUI fatwas.

From the above explanation, it can be understood that the MUI is highly likely to participate as a member of the Working Group (*Pokja*) in the formulation of Supreme Court Regulations (*PERMA*). Selecting the Supreme Court as a key partner for the Indonesian Ulema Council (MUI) in strengthening DSN-MUI fatwas is a rational step, particularly in the context of resolving Islamic economic disputes. This is because litigation-based dispute resolution must take place within the jurisdiction of the Supreme Court, specifically the Religious Courts. Moreover, the Supreme Court consistently conducts socialization and dissemination of PERMA to all elements under its coordination, including the Directorate General of Religious Judiciary (*Dirjen Badan Peradilan Agama*). This facilitates legal practitioners, especially judges, in enriching the development of Islamic economic law, bringing it closer to Supreme Court Regulations that include both existing and future fatwas issued by the DSN-MUI, made possible through strong and effective collaboration between the Supreme Court and the Indonesian Ulema Council.

²⁴ Ibid.

D. CLOSING

1. Conclusion

The hierarchy of legislation is clearly outlined in Law Number 12 of 2011 concerning the Formation of Legislation, in which DSN-MUI fatwas are not included. This clearly indicates that DSN-MUI fatwas do not possess binding legal force for the public, nor can they serve as a legally binding basis for law enforcers. Although some expert opinions argue that the DSN-MUI holds a relatively strong position, it cannot be denied that the debate over the status of DSN-MUI fatwas has yet to provide legal certainty for society, due to their non-binding nature on actors within the Islamic economic legal framework.

The hierarchy of legislation plays a crucial role in maintaining legal order within society. However, when involving DSN-MUI fatwas, there are complexities that must be taken into account. Although these fatwas are not included in the officially established hierarchy of legislation, their influence on the practice of Islamic economics cannot be ignored.

The debate surrounding the position of DSN-MUI fatwas creates legal uncertainty for society and Islamic economic actors. Although some experts believe that the DSN-MUI holds considerable authority, its legal force remains a subject of contention. This situation presents a challenge for law enforcers in determining the appropriate legal basis for handling cases related to these fatwas.

2. Suggestions

Further study is required to clarify the legal status of DSN-MUI fatwas, so that society and Islamic economic actors can have clear legal certainty. In addition, cooperation between relevant institutions to align the position of DSN-MUI fatwas with the existing hierarchy of legislation can serve as a positive step toward resolving this issue.

The position of DSN-MUI fatwas should carry stronger legal authority so

that they can serve as a form of "*social engineering*" in shaping a better society in resolving all forms of Sharia economic disputes.

Strengthening DSN-MUI fatwas can essentially be carried out in various ways, and has even been implemented through the incorporation of fatwas into Bank Indonesia Regulations (PBI) and Financial Services Authority Regulations (POJK). However, such measures are insufficient, as PBI and POJK only constitute administrative regulations and therefore do not significantly influence the process of resolving Islamic economic disputes.

The strengthening of DSN-MUI fatwas can also be enhanced through collaboration with legal institutions that hold greater authority, such as the Supreme Court of the Republic of Indonesia. With synergy between fatwas and legitimate legal institutions, the implementation of these fatwas can be better guaranteed and have a broader impact in maintaining the sustainability of Islamic economics.

The best step the MUI can take to strengthen the position of DSN-MUI fatwas as a source of legislative regulation in Indonesia, particularly in resolving sharia economic disputes, is to encourage the Supreme Court of the Republic of Indonesia to issue a Supreme Court Regulation that incorporates all DSN-MUI fatwas, thereby transforming them into binding legal provisions. The MUI can initiate collaboration with the Supreme Court to participate in the Working Group (*Tim POKJA*) responsible for drafting the Supreme Court Regulation, ensuring that its content accommodates or integrates all DSN-MUI fatwas into enforceable regulations that are binding on the entire society.

In addition, public education on the importance of complying with DSN-MUI fatwas needs to be enhanced. Through effective and comprehensive socialization, society can gain a better understanding of and respect for these fatwas as guidelines in economic transactions. This will help

increase awareness and adherence to Sharia principles, fostering a more sustainable and Islamically values-based economic environment.

Lastly, the role of mass media can also be utilized to strengthen the position of DSN-MUI fatwas. By providing extensive and in-depth coverage of the

implications and benefits of these fatwas, the media can serve as an effective channel for disseminating information and raising public awareness about the importance of adhering to fatwas in daily life. As a result, DSN-MUI fatwas can become more influential and effective in shaping a better economic and social society.

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