

## Research Article

# Development Method For Determining The Law Of Indonesian Ulama Council (MUI) Post Reform (Case Study of Fatwas related to Law)

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## Abstract.

This study aims to analyze the development of the method of determining the law by the Indonesian Ulama Council after the reformation in the case of legal fatwas. Data collection was carried out by way of interviews with MUI administrators throughout Indonesia represented by the fatwa commission which produced fatwas related to crucial issues of public interest and political fatwas that greatly influenced the political situation in Indonesia. The location of this research was conducted at the Central MUI institutions, DKI Jakarta Province, West Java Province, East Java Province, and West Sumatra. The results obtained are that the method used by the MUI runs in accordance with established procedures and standards in the MUI and does not shift from the previous period. The MUI is not influenced by political pressures from outside that surround it even though the pressure has a psychological impact on the perpetrators of the implementation of the law. The determination even though it looks like there is pressure, but in reality it is the response of the MUI itself. This is evidenced from several cases of MUI fatwa related to the needs of many people who are able to meet the sense of community law.

**Keywords:** Law; MUI; MUI fatwa; community law

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## 1. Introduction

Maqâshid al-syarî'ah is the goal of Allah SWT and His Messenger in Islamic law, then Maqâshid al-syarî'ah becomes a benchmark in establishing the law, both those that are clear in the text and the values that can be sought in the text. 'Izzuddin bin' Abd al-Salâm interpreted the maqâshid al-syarî'ah [1, p. 10] is the meaning and wisdom maintained by syari 'in all legal stipulations or even if they are not specifically devoted to maintaining it on every type of law from sharia laws, then includes everything that is given the nature of law and its purpose is inseparable from the syara' in maintaining it". Furthermore 'Izzuddin ibn 'Abd Salâm explained that all maqâshid aims to maintain the existing legal rules using tahqîq al-masâlih (realizing benefit) and dar'u al-mafâsid (rejecting things that damage) [1, p. 11], [2, p. 105].

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In line with that, Muhammad Rowwas Qal'arji asserted that Allah SWT prescribes laws relating to the provisions of halal and haram are prescribed with specific objectives, then those laws must have objectives called *maqâshid al-syarî'ah* [3, p. 24], [4]. According to Wahbah al-Zuhaily, *maqâshid al-syarî'ah* means the values and objectives of shara' which are implied in all or most of its laws. These values and targets are seen as sharia goals and secrets, which are determined by Shari in every legal provision [5, p. 748], [6, p. P. 5], [7, p. 1]. According to Muhammad Thohir ibn Âsyur [8, p. 174], [9], every law prescribed for humans is actually aimed at every law is *maqâshid al-syarî'ah* which is maintained as the purpose of shari'ah. This fact is a definite determination, because God makes everything impossible in vain.

One example of the formation of law that contains benefits is marriage retirement. Marriage is not intended only to channel the desires of human lust, but the intention is to *hifzh al-nasl* (maintaining offspring) and connecting human life as caliphs on earth, while offspring are only the result of love for the opposite sex [10, p. 13] [11]. The purpose of the law called *maqâshid al-syarî'ah* is to study the values contained in the law that lead to the contention of the *maslahat*, both getting advantages and replacing disadvantages. Imam al-Haramain can be said to be the first to emphasize the importance of understanding *maqâshid al-syarî'ah* in establishing the law [12, p. 52]. Ulama Usul such as Imâm al-Juwaini [13, p. 295] and al-Gazâli [14, p. 159], [15, p. 250] have imposed limits on this *Maslahat*. Al-Gazali firmly explained that *maslahat* must be determined through matter and existence as well as its level. This provision is very influential on the determination of *maslahat* which is recognized and in line with the texts and which are not in line and rejected by the Qur'an and Sunnah. If there is a conflict between the *maslahat* and the text, the *maslahat* must take precedence over the text (*taqdim al-mashlahât 'ala al-nushush al-syar'iyat*). They reasoned that many of the Shari'a are general in realizing *mashlahat* [16].

In the 7th century an opinion emerged that said that if there was a conflict between the *mashlahat* and the text, then the *mashlahat* took precedence as conceived by Najm al-Din al-Thufi. Al-Thufi explained that if there was a conflict between the texts and the benefits, the benefits must take precedence over the texts by way of *takhshish* and *bayan* [17]. The study of *maqâshid al-syarî'ah* leads to the search for and disclosure of the benefits of which is still a method of determining the law by Islamic legal experts until now. Likewise, the determination of the law of new problems that require answers [18, p. 3]. In the practice of establishing law or which is identical with the term *istinbath* law, benefit is a very important part and plays a role in determining legal products and developing the law itself, which is needed by the community at any time. There are many

legal products that are determined based on benefit value. Including what was done by the Indonesian Ulema Council which was reflected in various fatwa decisions. The importance of determining the law with consideration of mashlahat can be exemplified in the issue of the use of zakat. In Surat al-Taubah verse 60, the recipient of zakat is intended for the Eight Asnaf (groups) namely Fakir, Poor, Amil, Muallaf, Riqab (slave servant), Ibn sabil (people who are on their way out of stock), Garimin (people who are in debt) and fi sabilillah. Generally the Ulama M. Hasbi Umar explained that fi sabilillah was generally interpreted as people or troops who fought in the way of Allah SWT in order to uphold the religion of God [19, p. 156]. This opinion is held by Hanafi, Shafi'i and Maliki groups. While Imam Ahmad included those who were doing worship in the fi sabilillah group [5, p. 874].

The Indonesian Ulema has interpreted fi sabilillah more broadly than previous understandings as a whole that includes all the interests of Islam and Muslims. This understanding is in line with the understanding of contemporary ulama such as Rasyid Ridha, Sayyid Qutub and al-Maraghi who argue that the meaning of fi sabilillah is the benefit of Muslims in general, in religious and state life [5]. The Indonesian Ulema broadens the definition of the Islamic army or those who fight in the way of Allah, encompassing all the interests and benefits of the community as a whole according to the needs of the community. So that various development fields can be financed from zakat in the fi sabilillah category [20] [21]. Such as economics and activities that are beneficial to the public, services and smooth pilgrimage, education of the younger generation, public health, empowerment of the role of women, development of science and the defense and security sector[22]. Further issues such as the ruling on the law of the operation of a woman, Yusuf Qardawi [23, pp. 422–423] argues that women are basically allowed to work and it is possible to have to work in certain conditions, for example women whose husbands die while they have the expertise to work to earn a living for their children. The basic law is that women are not obliged to provide for it and they are supported by their husbands.

## 2. Methods

This research is part of social research using a qualitative approach with the perspective of legal sociology. This study raises field data using the interview method [24, p. 21], [25, p. 84]. Interviews were conducted with the administrators of the Ulema Council in the Central and in several provinces that could represent the data acquisition that was achieved in relation to the ownership of fatwa decisions in the legal and political fields.

This research is a critical analytic description, where later data obtained from interviews will be tested and shared through Focus Group Discussion (FGD) in the field will be presented with an original appearance as is and using a legal analysis model.

This study is more focused on the administrators of MUI in Indonesia, in every province that has fatwas related to legal and political developments. Determination of data sources is done by stratified techniques and snowball sampling. As many as 40 people spread across 8 MUI Institutions, namely Central MUI, DKI Jakarta MUI, West Java MUI, East Java MUI, North Sumatra MUI, West Sumatra MUI, South Sulawesi MUI, and Aceh MUI.

The analysis of this research is focused more on critical interpretation efforts by paying attention to aspects of coherence, authenticity, and independence [26, p. 286]. This research was carried out through four empirical material analyzes, namely: First, to conduct data reduction, by simplifying, abstracting and transforming rough data that emerged from written notes in the field (field notes). Second, reduce data and direct material in the form of informant experience with ethnographic methods. Third, the presentation of empirical material.

### 3. Results and Discussion

#### 3.1. Result

Determination of the legal products of the Indonesian Ulema Council is carried out with the flow and procedures that have been determined to be the Basics and Procedure for determining the fatwa carried out by the Indonesian Ulema Council (MUI) and contained in the Indonesian Ulema Council Fatwa Determination Guide Number: U-596 / MUI / X / 1997 was set on October 2, 1997. [27, p. 4]. The method of determining the law used by the Indonesian Ulema Council is in accordance with the method of determining the law of the salaf scholars. However, the Indonesian Ulema Council is more accommodating in using the benefit of the people when determining a legal decision, both in the form of fatwas and appeals and opinions and views of the Ulema Council [27, p. 5].

From the data search in the field, it was found that the MUI method in determining fatwas related to law that intersects with the needs of many people such as Friday prayers in addition to mosques is related to the requests of people who come to Jakarta from outside Jakarta in very large numbers, which fill public ways of holding demonstrations. In this case, MUI stipulates that Friday prayers performed are legal, but when worship can hamper the public interest it should not be performed.

The results of the decision The legal determination issued by the MUI generally stops after the stipulation of the fatwa and the existence of an agreement with the parties as the object of the fatwa, without proceeding to the execution and termination of deviant teaching activities. So many activities that change names and places while the teachings are still contrary to Islamic teachings. Thus, the MUI method in determining fatwas is moderate or *wasthiyyah* which is reflected in the various decisions issued.

### 3.2. Discussion

Atho Mudzhar, based on his review of the MUI fatwa between 1975 - 1988 or of the 22 fatwas issued by the MUI, Atho 'Mudzhar said that most MUI fatwas are based on *qiyas*, because *qiyas* are indeed effective in solving new problems that do not yet have the text in al. -Qur'an and Hadith. there is a fatwa that directly refers to the hadith, without reviewing the verses of the Koran, there is also a fatwa that directly refers to the book of *fiqh*, without looking at other sources, and there is also a fatwa that does not provide any basis and argument, but directly mentions the fatwa dictum, as well as the ability to play the film *The Message* because it does not show the face of the Prophet Muhammad. [28, p. 134]

What the researchers found in establishing the Ulama Council's law emphasized the concept of *Maqashid al-Sharia*, by trying to realize benefits and eliminate *mudharat*, so that what was found by Atho 'Mudzhar was different from what the researchers found, that after the reform period, there was a shift in the use of legal methods which has more portions, namely with the concept of *mashlahat* not with *qiyas*. This is indicated by the many norms of *Ushuliyah* related to *Maaslahat* and *Dhoruriyat*. Namely the following rules: which in each fatwa these rules are always disclosed, even though it is not associated with a strong reason where *dhoruratnya* and where the benefits of a provision that is declared.

## 4. Conclusions

There are real developments regarding the existence of MUI fatwas in Indonesia from 2013 to 2015, where the MUI fatwas issued by the institution have strong independence and adhere to established standard procedures. The process of legal stipulation carried out by the Indonesian Ulama Council, in various forms, both in the form of the fatwa itself, in the form of appeals, in the form of religious opinions or religious views is carried out in accordance with the existing stipulation procedures. From the several fatwas that

have been disclosed in this study which are considered to represent the legal and political fatwas issued by the Indonesian Ulema Council, both at the central and in several provinces. As for the factors that influence the development of the post-reform Indonesian Ulama Council law-making method in the case of fatwas in the legal and political fields, there are several factors, namely social development. Another factor is related to Indonesia's constitutional condition which also affects the form of legal stipulation carried out by the Indonesian Ulema Council, for example, now there are many non-Muslim communities in the Islamic community. Another factor is the depletion of Ghirah Islamiyah, it seems only a ritualistic routine and a loss of idealism as a Muslim.

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