


## The Concept Of Fatwa In The Perspective Of Islamic Law

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Article Info	ABSTRACT
<b>Keywords:</b> Fatwa, MUI, Islamic Law	Fatwa works as guidelines for people For understand and apply Islamic teachings in an unavoidable situation in a way explicit set up in the Qur'an or Hadith, research This aiming For analyze fatwa concept in perspective Islamic law . The methods applied For analyzing the fatwa and its position in Islamic law is method qualitative with approach studies literature , review various source Islamic law . Approach This used Because research conducted including in category studies library . Research results show that the fatwa works as guidelines for people in face problem new that is not set up in a way explicit in the Qur'an and Hadith . Fatwas also reflect dynamics adaptive Islamic law to context social society . Fatwa does not only give solution to issues new , but also contribute to the development thinking Islamic law in general overall .
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### INTRODUCTION

Developments in science and technology have been followed up with development challenges that cover all aspects of life, including the economy. Although it brings many conveniences and pleasures, it also gives rise to various new behaviors and problems. Some problems that were previously unrecognized or unimaginable have now become a reality.

Every era certainly brings its own challenges. In the midst of this, Islam shows its superiority with its ability to adapt to every time and place. Allah has created human abilities that vary, including people who are experts in the fields of fiqh, hadith, social sciences, psychology, and other fields of science. In this diversity, humans complement each other with their respective strengths and weaknesses, carrying out a process of mutual acceptance and giving. This diversity also increases human ability to understand the laws of Allah SWT.

Therefore, when problems arise, they need each other to get solutions from those who are more expert. The response of the scholars is considered very important in solving complex problems that do not have a clear basis in the Qur'an or the Sunnah of the Prophet. This causes the scholars to be challenged to find evidence that is in accordance with Islamic law in order to create prosperity.

In the context of Islamic law, fatwas serve as guidelines for people to understand and apply Islamic teachings in situations that are not explicitly regulated in the Qur'an or Hadith. The purpose of Islamic law is actually the purpose of the Creator of Islamic law itself. The purpose of Islamic law is the direction of every human behavior and action in order to achieve happiness in life by obeying and avoiding what has become His law. Fatwas also reflect the results of ijtihad, where the mufti issues an opinion based on an understanding and analysis

of the sources of Islamic law. Thus, fatwas are important to answer new problems that do not have previous legal provisions, as well as to help society in living life according to sharia principles.

Fatwa is a term regarding interpretation or opinion on a problem related to Islamic Law. Given that Indonesia is a country with a majority Muslim population, it is closely related to fatwa. Fatwa is an instrument of fiqh that is recognized for its role in maintaining the flexibility of Islamic law. Because Fatwa is an effort to direct society to always be within the scope of worship (Islam) in every problem that arises and new developments that occur.

As we all know, the normative evidence of sharia in the form of the Qur'an and Sunnah is very limited. Meanwhile, new events, incidents and developments always exist and continue to develop along with the progress of science and technology. So it takes someone who has strong authority in exploring the law based on the perspective of sharia from the legal evidence contained in the Qur'an and Sunnah.

## RESEARCH METHODS

The method used to study the fatwa and its position in Islamic law is a qualitative method. This method is used considering that the research conducted is classified as a literature study. Qualitative literature study research begins by collecting primary and secondary literature sources related to the focus of discussion. This journal also quotes from several journal sources, articles, books and several sources from the internet with a legal basis from the translated interpretation book of Sheikh Abdul Halim Hassan. After that, data processing is carried out to be displayed as research findings and interpreted to obtain the final research conclusions.

## RESULTS AND DISCUSSION

### Definition of Fatwa

Etymologically, fatwa comes from the Arabic word *aftâ*, which means advice, counsel, and answers to legal questions. According to **al-Fâyûmî** and **al-Jurjânî**, the term fatwa comes from the Arabic words *alfatâ* and *al-futyâ*. *Al-fatâ* means a strong young man. That means, a mufti as a fatwa giver must be strong in facing questions asked by someone or a group with new answers with strong arguments. *Al-futyâ*, means an answer to something problematic (difficult) in the field of law.

Meanwhile, based on the meaning of the terminology, there is an understanding proposed by an Islamic legal scholar, Dr. Abdullah Abdul Muhsin al-Turki who wrote, "Fatwa is information given by a Mufti in response to a question or explanation of a fiqh law, even if it is not a specific question.

While the Mufti is explained as someone who provides information about the laws of Allah because he knows the basics of his arguments. There are also those who explain that the Mufti is someone who has the authority to understand the laws of new events and incidents based on the legal arguments in Islam. While other scholars say that the Mufti is someone who explains the laws of Allah.

Fatwa is an answer or advice determined by an official institution or individual whose authority is not in doubt, delivered by a mufti or cleric, as an answer to a question raised by the person requesting the fatwa (mustafti). Based on this understanding, it can be stated that fatwa is legal materials determined based on the answer to a question from the person requesting the fatwa, either an individual or a group.

In deciding a fatwa, there are parts that cannot be separated from its existence, including; first, *al-ifta* or *al-futya*, which explains the *sharia law* as an answer to the question. Second, mustafti, which is the individual or group who asks the question. Third, mufti, which is the scholar who issues the fatwa. Fourth, mustafti fih, which are the issues whose legal status is asked. Fifth, fatwa, which is the mufti's (scholar's) answer to the question asked.

Of these five, the most important is the mufti (ulama) because the quality of the fatwa issued is very dependent on the mufti's faqih. The mufti must be someone who understands religion deeply, someone who is intelligent, just, trustworthy, knowledgeable, independent (free from pressure or interests), and still alive. The mufti must also be someone who masters the rules of fiqh and ushul fiqh, has the expertise to conduct ijtihad, has the knowledge needed to formulate laws, such as the science of nahwu, nerve, language, mustahd hadith, the science of interpretation and the science of hadith.

#### **The Position of Fatwa in Islamic Law**

Fatwa is often a topic of debate among scholars of ushul fiqh in their important works. From the perspective of scholars of ushul fiqh, fatwa is understood as an opinion given by a mujtahid in response to a question asked by a mustafti regarding a case, and is not binding. Mustafti can be an individual, institution, or community group. Therefore, the product of the fatwa does not have to be followed by the mustafti, so that the fatwa does not have binding legal force.

Fatwa occupies an important position in Islamic law, because fatwa is an opinion put forward by Islamic legal experts (fuqaha) regarding the legal status of a new problem that arises in society. When a new problem arises for which there is no explicit (firm) legal provision, either in the Qur'an, Sunnah and ijma or the opinions of previous fuqaha, then fatwa is one of the normative institutions that is competent to answer or determine the legal status of the problem. Because of its position which is considered to be able to determine the law on a particular case or problem, Western scholars of Islamic law categorize fatwa as Islamic jurisprudence.

In connection with the above, a fatwa can be interpreted as an explanation of Sharia law on a particular issue, so that the method of taking a fatwa is no different from the method of exploring Sharia law from Sharia arguments (ijtihad). The only way to understand Sharia law from its postulates is through ijtihad, and no other method can be used. Thus, a mufti (fatwa giver) actually has the same role as a mujtahid, who tries his best to find laws from sources of Islamic law, namely the Koran and Hadith.

The position of fatwa in Islamic law can be analyzed through an understanding of the fatwa itself. When discussing fatwa, it is important to consider who or the organization that issued the fatwa. Therefore, the discussion of fatwa cannot be separated from the concept of ijtihad. In addition, fatwa has a very significant role in Islamic law, especially in dealing with

legal issues that arise in society, including in the context of the development of sharia economics.

### Views of Scholars Regarding Fatwa

In examining the concept of fatwa in Islamic law from the perspective of scholars, this study focuses on their views that make the Qur'an and Al-Hadith the basis of law and guidelines for life. In addition, this study also emphasizes the views of salaf and khalaf scholars regarding fatwa.

In general, early scholars were not in a hurry to issue fatwas. As a form of caution, they often expressed their ignorance of the problem at hand. This reflects the attitude of a late scholar towards things that they do not yet understand or know clearly. Early scholars usually firmly reject fatwas issued by individuals who have limited religious knowledge, or in other words, by people who are not experts. They argue that if someone who does not meet the requirements as a mufti issues a fatwa, then the fatwa must be rejected and denied so as not to mislead the people. Early scholars have determined that someone who issues a fatwa without meeting the criteria as an expert in the field has actually committed a sin and disobeyed Allah SWT, His Messenger, and harmed humanity. Therefore, the fatwa issued by such a person is considered invalid and he is included in the category of an ungodly person.

In essence, fatwa according to Ibn Taymiyah's view is basically not related to anything (fatwa does not recognize a package/sponsorship system) except that it is only based on the postulates of the text of the Shari'ah (al-Qur'an and al-Hadith) and aqidah- general aqidah (ushul fiqh and qawaidul fiqh).

Ibn Qayyim argued that people who issue fatwas without eligibility are like those who give directions without knowing the way, or like individuals who do not understand medical science but still practice it. He considered that the condition of such muftis is worse than the one mentioned. In addition, Ibn Qayyim also noted that the decisions of a leader or person in power are often rejected by society, especially if they are not based on religious values, so their fatwas tend to be ignored. This shows that someone who dares to issue a fatwa without adequate religious and general knowledge will tend to be ignored by society.

The views of scholars on fatwa show that fatwa has an important position in Islamic law. According to Prof. Atho Mudzhar, fatwa must be appropriate and useful, issued by competent scholars, and can be implemented in society. Dr. Ahmad bin Abdullah Humeid emphasized that only qualified scholars may conduct ijihad and issue fatwa. Salaf scholars are of the opinion that fatwa must be issued with in-depth knowledge, and those who are not qualified should not issue fatwa. Fatwa must also be based on the Qur'an and Sunnah to ensure its validity.

### Arguments for the Permissibility of Fatwa

The argument for the permissibility of Fatwa is based on the Word of Allah SWT in QS. An-Nisa [4] Verse 176:

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُعَذِّبُكُمْ فِي الْكَلَالَةِ ۗ وَاللَّهُ بَعِيدٌ عَنِ الْظُلْمِ  
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قُلْ هُمَا النَّسْلَانِ مِمَّا قَلَدَكَ مِثْلُ حَظِّ الْأُنثَيْنِ ۗ يُبَيِّنُ اللَّهُ لَكُمْ أَنَّهُ  
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Meaning: " *They ask you for a fatwa (regarding kalālah). Say, "Allah gives you a fatwa regarding kalālah, (namely) if a person dies and he has no children, but has a sister, her (sister's) share is half of the property he left behind. As for the brother inheriting (all of the*

sister's property) if he has no children. However, if there are two sisters, divide both two-thirds of the assets left behind. If they (the heirs consist of) several brothers and sisters, one brother's share is the same as the share of two sisters. Allah explains (this law) to you so that you do not go astray. Allah is All-Knowing of everything."

QS. An-Nisa [4] Verse 83:

وَإِذَا جَاءَهُمْ أَمْرٌ مِّنَ الْأَمْنِ أَوْ الْخَوْفِ وَاللَّوْلَىٰ willing God وَمِنْهُمْ God willing

"...And when news comes to them about peace or fear, they broadcast it. And "if they convey this to the apostles and ulul amri from their group, surely it will be known by people from their group who are able to put it to justice . "

As for Muslims who have a weak faith, if they hear news related to Muslims, whether the news is encouraging, such as winning a war or sad, such as a setback or defeat by Islam, they immediately spread the news, because they think their actions are no harm. Because their actions like that were not good, Allah revealed the verse " If they convey such things to the apostles and ulul amri from their group, surely it will be known by people from their group who are able to understand it. "

Strictly speaking, before they broadcast the news to the public, it is better if it is conveyed or reported first to the leaders or heads who will spread it later to the general public. Because this verse came down, as narrated by Abdullah bin Hamid, Muslim, Ibnu Abi Hatim from the path of Ibnu Abbas and Umar bin Khattab, he said,

"When the Prophet Muhammad SAW exiled his wives, I was standing in front of the mosque door and I saw a lot of people hitting them with pebbles, saying, "Rasulullah SAW. had divorced his wives". So I stood at the door of the mosque, shouting at the top of my voice, "No, he did not divorce his wives". In connection with that incident this verse came down."

If we pay attention to this verse and compare it with the verse " If you argue about something, return it to Allah and the Messenger ," then this verse is a reminder of past events. The only difference, as explained by Al-Razi, is that the previous verse was addressed to Muslims, while this verse is addressed to the hypocrites, who were happy to hear about the defeat of the Muslims.

Because in this verse there is the word " istinbath " (placing the law), then Imam Al-Razi issued several problems from this verse, which are related to the science of fiqh. Furthermore, he said, that in this verse, information is obtained which is the evidence that the metaphor becomes an argument, because from it four branches of law are obtained, namely, first , the laws that occur, which are not obtained by the way of the text. *Second* , istinbath can be used as an argument. *Third* , Lay people are obliged to follow the scholars in the law of Fiqh. *Fourth* , the prophet is also charged with istinbath-kan law like ulul amri.

But this statement was rejected by the author of Al-Manar. According to him, the matter he discussed had nothing to do with the verse, either according to its essence or according to its metaphor or by way of kinayah , then the author of Al-Manar said,

" The meaning of this verse is very clear. Most Muslims who have weak faith, or hypocrites and the majority of people interfere in matters related to security and chaos, peace and war. They continue to immediately broadcast news or news that they do not yet know how the actual event is, or they do not know the consequences of a news that is spread directly, especially *if the news is related to war matters. Because their actions are dangerous*

*and irresponsible, Allah gives a warning, namely that the news may only be broadcast by the apostle or the imam, or the war chiefs, commanders, or ulul amri or the shura assembly (People's Representative Council)."*

In discussing the law contained in a verse, Abdul Halim Hasan used the bi al-ma'sūr method. Tafsir alma'sūr is an interpretation based on the correct citation of the Qur'an and the sunnah or the history of the companions and the words of the great tabi'īn.

### **Fatwa Law**

Legally, fatwas also have a minimum of five statuses, according to existing taklifi laws.

a. Yes, you can.

This is the basic legal status of fatwa. Because, based on the reality that occurred among the companions, it was found that they issued fatwas to the community to direct them to the provisions of sharia. So there were companions who were famous for their many fatwas and there were also those whose fatwas were limited. The same thing was found among the tabi'in and the generations after them. Therefore, scholars explained that the community should have a reference regarding religious issues that they could ask if they faced daily problems whose legal status they did not yet know. As Allah says, "Ask the people of knowledge if you do not understand what it means." (QS an- Nahl: 43).

b. Sunnah.

It is recommended for a Mufti to continue issuing fatwas regarding problems faced by society. Even though in that area there is a scholar who has the same expertise as the person concerned or there are even other experts who are much more competent in matters of legal istinbat.

c. Must.

This status applies to anyone who has strong authority in exploring Islamic law. While society is indeed in need of an expert in the field of Islamic law. Meanwhile, in the area no one else was found who had expertise like him. Moreover, Allah confirms in the Qur'an (QS Al- Baqarah : 159).

d. It is reprehensible.

This status applies to a Mufti who is in an abnormal condition. Such as being very hungry or excessively emotional or experiencing a very intense feeling of anxiety or excessive fear or extreme sleepiness or holding back urine or defecation or the like. In such conditions, a Mufti should refrain from fatwa activities. Because of such conditions he is not normal and is less able to concentrate optimally in solving new problems that are being faced by society.

e. Haram.

This status certainly applies to anyone who does not have expertise in the field of jurisprudence and does not understand the intricacies of the problem in question. It is forbidden for someone who does not meet the qualifications to be involved in fatwa activities so that they are not included in the category of people who say something about Allah without a clear scientific basis. (QS Al A'raf: 33) In this verse, Allah emphasizes that saying something about Allah without sufficient knowledge is a haram

thing that should not be done at all. For this reason, Allah limits the haram things in the verse above by using the word of limitation ( *adatu hasr*).

Because it is related to the issue of expertise and competence, especially when we are among those who believe that fatwas can be done on a case-by-case basis, then of course the Mufti has a different level of expertise according to their ability to master the fatwa devices. Ibn Qayyim al-Jauziyah divides the levels of these Muftis into several levels:

a. Level :

A person who has in-depth knowledge about the Qur'an, Sunnah and the opinions of friends. He was a mujtahid in the events and incidents that occurred in society. He tries to follow the instructions and directions of the Shari'ah to the maximum. His ijtiḥad was not damaged by the fact that he submitted to another Mufti who was more credible on a particular issue. It is certain that even all experts in Islamic law will still be muqallid on other issues where there is a mujahid who is more expert than him.

b. Level

Mujtahid sect. That is, an expert who understands fatwas, opinions, ijtiḥad mechanisms and the basics of fatwas within the scope of the school of thought that he follows so that he has the capacity to make ijtiḥad and make analogies on matters that have not been discussed in his school of thought without submitting to the imam of that school of thought, both within the scope of legal status and the arguments provided. used. However, he still tried to follow the methods of the imams of his school in the field of ijtiḥad and fatwa mechanisms and actively promoted the school to the public by compiling and confirming it. So that he is in line with his priest in terms of goals and methods at the same time.

c. Third Level

Mujtahid sect. That is, an expert in the scope of a particular school of thought using the arguments used in his school of thought and mastering the fatwas that have been issued. It's just that, he's not as skilled as the previous level. He only limited himself to the opinions and fatwas of his imam without having the courage and expertise to carry out ijtiḥad according to his imam's method. Finally, he did not dare to differ with the priest. If he encounters the opinion of the imam of his madhhab on a particular issue, then he does not dare to use another opinion.

d. Fourth Level.

A group of people who are educated in a particular school of thought, memorize the fatwas and issues discussed by that school of thought. They firmly claim to be full muqallids of this school of thought from all sides. If they mention the Qur'an and the Sunnah on certain issues then it is only as a form of tabarruk, not for emigration and support for practice. If they see an authentic hadith that contradicts the imam of their madzhab then they commit to the imam's opinion and abandon the authentic hadith. If they saw Abu Bakr, Umar, Uthman, Ali and other friends -radiyallahu 'anhum- giving a fatwa and found that their imam's fatwa was different from that of those friends, they remained committed to the opinion of the imam of their school while arguing, "The Imam certainly knows better about this matter compared to us. We are purely his followers. Of course we can't violate and exceed his opinion. Of course the priest knows more about his thoughts Pthan we do."

## Conditions and Etiquette of Mufti

### a. Requirements of a Mufti:

Imam Utsman bin Abdur Rahman or better known as Imam ibn Sholaah has written a special book on the issue of mufti and people who ask for fatwa. Discussions about fatwa, mufti and other related matters have been written by scholars in ushul fiqh books. Imam ibn Sholah in his book divides mufti into two, mufti mustaqil (independent) and mufti ghoiru mustaqil. The first time he mentioned the general requirements of mufti, as follows:

- 1) Muslim;
- 2) Mukallaf (having reached puberty);
- 3) Trusted and reliable;
- 4) Clean from wickedness and things that bring down his honor;
- 5) A person who is knowledgeable, clear in his understanding and an expert in taking legal instructions.

Then he mentioned the special conditions for mufti mustaqil, as follows:

- 1) Expert in sharia laws from the Book, Sunnah, Ijma, and qiyas.
- 2) Experts in the requirements for taking sharia evidence, how to conclude the law, all of which are done by utilizing ushul fiqh books;
- 3) Expert in the science of the Qur'an, the science of hadith, the science of nasikh Wal Mansukh, the science of nahwu and language, and knows the differences between scholars and their agreements;
- 4) Expert in jurisprudence and its principles.

The one who can fulfill these requirements is an absolute mujtahid.

### b. Adab Mufti (Person Who Gives Fatwa ):

- 1) If there is someone who is more knowledgeable, then you must invite that person to deliver a fatwa. If there is none, then he will give a fatwa regarding the law he wants to convey.
- 2) If there are two fatwas, and the first fatwa is withdrawn (ruju'), then it is not permissible for the mufti and the person requesting the fatwa to implement the first fatwa that has been withdrawn.
- 3) It is forbidden for a mufti to take a fatwa lightly (tasahul), and it is also forbidden for others to ask for a fatwa from him. Including taking a fatwa lightly is rushing to answer a law before really understanding the issue being asked.
- 4) You are not allowed to give a fatwa when you are not in a good condition, such as when you are angry, sad, very happy, very hungry and thirsty, bored, anxious, seriously ill, and any situation that can make your heart and mind uneasy. Do not give a fatwa in these circumstances, unless you are absolutely sure that the fatwa will not be out of line with the truth.
- 5) The mufti must be truly skilled and understand in detail the fatwa he is delivering, and he is not allowed to take wages (ujrah) for the fatwa he is delivering, unless he really has no income at all.
- 6) It is not permissible to give a fatwa about oaths (aiman) and confessions (iqrar) if you do not really understand the language of the area of the person asking.



- 7) It is not permissible to give a fatwa by quoting opinions from books that are not credible and trustworthy.
- 8) If he gives a fatwa regarding a new incident, and then the same new incident comes again, then it is permissible for him to immediately answer with the fatwa he issued previously. However, according to a more valid opinion, he should rethink his fatwa.
- 9) The mufti should not simply answer "this issue is still disputed by scholars, there are three opinions on this issue, there are three narrations on this issue and so on", because in essence that is not the desired answer from the person requesting the fatwa, but the mufti must truly determine which opinion is the strongest of the many opinions that exist.

### Legality of Fatwa in Indonesia

In the context of modern constitutional law, the function of fatwa in a country can be divided into three categories. First, in countries that use Islamic law as the basis and laws that are applied comprehensively, fatwa functions as a binding legal decision. Second, in countries that adhere to secular law, fatwa has no role or function in state life. Third, in countries that integrate secular law with Islamic law, fatwa only functions in the context of Islamic law.

Reviewing the conditions in Indonesia, this country can be classified as a country that implements the third pattern. Therefore, the study of fatwas in Indonesia is very interesting, considering that the majority of its population is Muslim and adheres to the Sunni school of thought, even though this country is based on Pancasila.

Based on the legal sources applicable in the national legal system, namely in the national legal system formally there are five sources of law, the sources of law are as follows: laws, customs, judge's decisions (jurisprudence), treaties, and doctrines (expert opinions/legal experts). In the five sources of constitutional law, the concepts relating to: (i) legal values and norms that exist as an unwritten constitution; (ii) certain normative customs that are recognized in common legal traffic; and (iii) legal science doctrines that have been recognized as *ius comminis opinio doctorum* among experts who have generally recognized authority. In every legal system, these three things can also be considered as sources of law that can be used as references or references in making judges' decisions.

The fatwa of the Indonesian Ulema Council (MUI) does not have direct binding legal force, but can be valid after being integrated into legislation. The MUI fatwa serves as legal advice that is recognized in the context of Islamic law and can be used as a reference by judges in their decisions. However, this fatwa cannot be forced on all citizens and is more of a guide for Muslims. In the field of Islamic economics, the DSN-MUI fatwa has stronger legitimacy because it is often adopted in formal regulations.

### CONCLUSION

That the substance of a fatwa is an explanation of Islamic laws. Thus, the person who issues a fatwa should be someone who has a complete understanding of the Qur'an and Sunnah. The majority of Muslim scholars (Jumhur) are of the opinion that a mufti must be qualified as a mujtahid. Although some scholars consider it sufficient to be a religious expert (faqih) only. This difference is based on a principle of fiqh which states, "Whether *ijtihad* is possible to be done per case or not."

Issuing a fatwa is a great profession carried out by Allah Himself with His word, "If they ask you for a fatwa regarding women's issues, tell them that Allah will give a fatwa regarding the problems they experience ..... " then, this profession was carried out by the Prophet Muhammad SAW. and his companions later on. However, behind the nobility of this profession, there is also the potential for danger for anyone who holds this profession if they do not meet the established standards of expertise. Because he is prone to problems because he says something without being accompanied by sufficient knowledge.

Mufti has various levels. This confirms the opinion of those who say that a fatwa does not need a qualified mujtahid. Because if such a requirement is set, then there will be a big problem in the community. They will follow their lusts without guidance and direction from religious experts due to the difficulty of finding someone who meets the criteria as a mufti.

Mufti has several requirements and criteria, such as must be a Muslim, trustworthy and honest, far from indications of wickedness and things that can damage honor. Have a good understanding, intelligent, sharp brain, behave well and correctly the procedures and procedures for drawing legal conclusions that he does.

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