

EXISTENCE OF FATWA OF THE NATIONAL SHARIA COUNCIL OF THE INDONESIAN ULEMA COUNCIL (DSN-MUI) NO. 108/DSN-MUI/X/2016 CONCERNING GUIDELINES FOR ORGANIZING TOURISM BASED ON SHARIA PRINCIPLES: BETWEEN SPIRITUAL AND REGULATORY

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ABSTRACT

The halal tourism industry, a significant sector in Indonesia, hinges on a harmonious blend of sharia principles and national legislation. This dual regulatory framework plays a pivotal role in ensuring the industry's robust growth while adhering to cultural values and legal safeguards. Sharia law, represented by fatwas (Islamic rulings), is a foundational element in halal tourism. These principles encompass various aspects, such as halal food, modest dress codes, and ethical behavior, aligning with the cultural and religious expectations of Muslim travelers. To fortify this alignment with the legal structure, it's crucial to integrate these fatwas into positive law, the national legal framework. This integration achieves several vital objectives. First, it establishes a legal foundation for the halal tourism industry, giving it a solid footing within the broader legal context of the country. Second, it enhances transparency, ensuring that halal tourism operators and tourists alike understand the rules and expectations, thereby fostering trust and credibility. Third, it ensures that the industry remains compliant with both Sharia values and national regulations, leading to a more sustainable and inclusive sector. The ultimate goal is to create a halal tourism industry that not only caters to the needs of Muslim travelers but also upholds legal standards, protects consumer rights and contributes positively to the nation's economy and cultural heritage. By synergizing Sharia principles with national legislation, Indonesia can pave the way for a dynamic and legally secure halal tourism industry that benefits both its people and its image on the global stage.

Keywords: *fatwa, halal tourism, law of halal tourism*

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INTRODUCTION

The position of halal tourism is a kind of alternative for Islamic tourists who want to get not only tourist needs but also spiritual needs. Halal tourism, not only belongs to Islamic tourists, but non-Islamic tourists are also allowed to enjoy halal tourism (Mashuri, 2020). In the context of the development of halal tourism, we can trace that the development of halal tourism cannot be separated from religious tourism, sharia tourism, and then develops into halal tourism (Fatkurrohman, 2017).

The foundation of halal tourism cannot be separated from Islamic law which regulates the life of Muslims. There are five laws in Islam. First mandatory. Compulsory is an order that must be carried out, if the order is carried out, it will get a reward, otherwise if it is not done, it will get a sin. Second, Sunnah. Sunnah law means advice (Rahmi, 2020). If you do it you will get a reward, if you don't do it you won't sin. The third is Haram. If you do it you will get a sin, otherwise, if you leave it you will get a reward (Al Farisi, 2022). Fourth, makruh. This makruh law if it is done is not sinful and if it is abandoned it will get a reward. The fifth law is mubah. If it is done there is no reward and no sin and if it is not done there is no reward and no sin (Ramadhani, 2021).

At the concept level, there is actually still much debate regarding the use of the concept of halal tourism, Islamic tourism, halal-friendly tourism destinations, halal travel, Muslim friendly travel destinations, friendly travel destination, and halal lifestyle (halal lifestyle) (Wijaya et al., 2021).

The existence of the use of the concept which is still under debate is said to not need to drag on. If we look at the use of the concepts mentioned above, the most dominant is the use of the concept of Islamic tourism and halal tourism (Patrianti & Binol, 2019).

Tourism capacity is part of the teachings of muamalah in Islam, of course, the way out is that there needs to be a legal breakthrough that is produced through *ijtihad* by competent experts. This means that tourism as a legal object (both sharia and national) is an area of *ijtihadi* where space is open for discussion by relevant experts according to their respective fields. Thus deciding the law in relation to halal tourism as a new destination in the world of tourism requires the participation of various experts, including Islamic experts in the field of law (Ulum, 2019).

In principle, the halal tourism industry requires two kinds of law, namely sharia and national legislation. Of course, the role of these two laws cannot be avoided, so that the development of the halal tourism industry in Indonesia can develop according to character and be legally safe in the implementation of its programs.

According to fiqh rules, muamalah in Islam:

الأَصْلُ فِي الْأَشْيَاءِ إِلَّا بَاطِلٌ حَتَّى يَدُلَّ الدَّلِيلُ عَلَى التَّحْرِيمِ

"The original law of something (muamalah) is permissible until there is evidence that prohibits it (makes it illegal or forbids it)"

Starting from the principles above, it shows that building a halal industry is basically legal. It's just that in managing or relating to objects and so on, none of them are counterproductive to sharia principles. If there is a contradiction with the principle, then 'halal' which is its character will no longer have a *syar'i* meaning (Djakfar, 2017).

METHOD

This research is focused or emphasized on normative legal research, which analyzes the substance of the law so that it cannot be separated from the normative method of analysis, which departs from statutory regulations that have authority as primary legal material (Wulandari & Indahsari, 2021).

The approach used in this study is the statute approach and the conceptual approach. Primary legal material is legal material that is authoritative, meaning it has authority. The primary legal materials needed in this research include:

1. The Koran
2. Al-Hadith
3. Jurisprudence
4. Law no. 12 of 2011 concerning the Formation of Legislation (State Gazette of the Republic of Indonesia No. 82)
5. DSN-MUI Fatwa No. 108/DSN-MUI/X/2016 concerning Guidelines for Organizing Tourism Based on Sharia Principles

The collection of analysis of research legal materials is carried out with the following steps:

1. The first step is to collect primary legal materials and secondary legal materials as long as their contents are relevant to the subject matter (topic) of the research.
2. The second step is to systematize and interpret primary legal materials and then carry out a qualitative juridical analysis, namely legal analysis that is based on legal reasoning and legal argumentation systematically.
3. The third step is to draw conclusions in the form of arguments that answer legal issues.
4. The fourth step is to provide a prescription (recipe/formula) based on the arguments that have been built in the conclusion.

RESULTS AND DISCUSSION

The legal basis of *syar'i* in Islam which focuses on tourism issues, when examined carefully, terminologically seems to have not been found in the treasures of Islamic scholarship (classical *maraji'*), although there is such a thing as a product of contemporary law to meet the needs of modern or urban society. currently is a fatwa. The fatwa that is relevant to the issues discussed is the Fatwa of the National Sharia Council of the Indonesian Ulema Council (DSN-MUI) No. 108/DSN-MUI/X/2016 concerning Guidelines for Organizing Tourism Based on Sharia Principles (Wijaya et al., 2021).

Today, almost all businesses have switched or established businesses based on Islamic sharia principles, including hotels. DSN-MUI Fatwa No. 108/DSN-MUI/X/2016 concerning Guidelines for Organizing Tourism Based on Sharia Principles fifth point related to sharia hotel business, in which it does not only discuss specific tourism but also discusses all aspects that support tourism based on sharia principles including provisions related to sharia hotels. Every entrepreneur who establishes a sharia hotel must meet the criteria specified by the MUI in the fatwa:

1. Sharia hotels may not provide access to pornography and immoral acts;
2. Sharia hotels may not provide entertainment facilities that lead to polytheism, immorality, pornography and/or immoral acts;
3. Food and drinks provided by sharia hotels must have received a halal certificate from the MUI;
4. Provide adequate facilities, equipment and facilities for the implementation of worship, including facilities for purification;
5. Hotel managers and employees are required to wear clothes that comply with sharia;
6. Sharia hotels are required to have guidelines and/or guidelines regarding hotel service procedures to ensure the implementation of hotel services in accordance with sharia principles;
7. Sharia hotels are required to use Islamic Financial Institution Services in providing services

Before discussing the legal power of a fatwa, we must first understand the meaning of a fatwa. Fatwa is the view of the clergy in establishing Islamic law regarding an event that requires a legal determination (Nafis, 2011). According to Ahmad Hidayat Buang in M.Cholil Nafis, the fatwa is an important element in modern times that functions as a guide in explaining

and explaining to the public about Islamic laws relating to everyday life such as worship and beliefs for the continuation of Muslims in religion (Ubaidillah, 2008).

Fiqh is understood as a compilation of Islamic law that is fully standardized and is assumed to be as strong and sacred as the *nushush shariyyah* contained in the Al-Qur'an or Al-Hadith. In essence, this is not the case, as the rule above states that the reform of Islamic law (fiqh) is a necessity, because the texts of the Koran and al-Hadith have stopped, while society continues to change and develop with its various problems. The scholars explain this with the expression: *li anna an-nushus mahdudah walakin al-hawadits wa an-nawazilghair mahdudah, aw li anna an-nushus tatanaha walakin al-hawadits wa annawazil la tatanaha*, (actually the text is limited, while the problems that arise are not limited, or because actually, the text has stopped while the problems will always arise and never stop). For the purposes of reforming Islamic law (fiqh), the ulemas have actually provided a solid foundation of methodology (*manhaj*) (Yusuf, 2020). Understanding fiqh limited to the existing body of Islamic law is not enough; therefore, the reform of Islamic law is a necessity, especially in this era of very rapid changes as a result of advances in industry, trade, services, contracts, technology, communications, and others. Among the factors driving the urgency of reforming Islamic law today include:

First, social change, which includes cultural, economic, and political changes at the present time requires Islamic jurists (*fuqaha*) to carry out a review of the opinions of previous scholars who are no longer in accordance with the current social context. Second, the development of science and technology has greatly influenced efforts to find a stronger opinion among the opinions that have developed in classical fiqh where in the classical period science and technology had not developed rapidly, especially the exact sciences. With the help of science and technology, jurists (*fuqaha*) can re-examine the provisions of old laws which have become discourses in the Middle Ages to be contextualized under much more complex current conditions. At this time, stronger opinion determination is not only based on textual arguments with a deductive approach, or even just an *ansich* fiqh school of thought but also its relevance to societal changes.

Third, the demands of the times require contemporary Islamic jurists to look at the complexity of contemporary problems and choose legal views and fatwas that make it easier (*taisir*) and avoid difficulties (*al-haraj*) in *furu* laws, both in matters of worship and *muamalat*. Fourth, the emergence of new and renewed cases requires new *ijtihad* because these problems have never been answered by classical jurists.

In addition to being based on *nushus syar'iyah*, fatwas are also based on a reflection of the social conditions that surround them. Such is the influence of social conditions on the birth of a fatwa, that it can be said that the relevance of a fatwa is highly dependent on the social conditions surrounding it.

Characteristics of a fatwa which is a response to something that is developing is a very realistic entry point for the reform of Islamic law. The DSN-MUI fatwa at a certain level is consciously intended to carry out this reform. Indeed, the renewal of Islamic economic law carried out by the DSN-MUI does not in the sense of creating a new law that is completely unrelated to the opinions of previous scholars. The update carried out by the DSN-MUI through its fatwa is more about testing the validity of God against the opinions of previous scholars (*masalik al-illah*). nowadays, this opinion is abandoned, but the *manhaj istinbatul hukm* is still

used by the DSN-MUI. That is why there are several DSN-MUI fatwas considered inconsistent with the outward opinion of previous scholars in the Mu'tabarah Jurisprudence books.

The most prominent characteristic of a fatwa is that it has no binding power. This means that the fatwa issued does not have the power to bind anyone, including the party requesting the fatwa (mustafti).

Thus there are important matters that need to be noted relating to the character or form of the non-binding fatwa. First, a fatwa is responsive, meaning that a fatwa is a legal view that is only decided after a question is asked or as a response to a religious problem that has occurred. In other words, a new fatwa will be issued after a request (based on demand) or to provide an answer to something that has not yet been decided by law.

Second, in terms of legal force, a fatwa as a valid view is not binding. In other words, the party requesting a fatwa (mustafti), whether individual, group (collective), or institution, does not have to follow the contents of the fatwa given to him. This is because the fatwa of a mufti in one area may be different from the fatwa of another mufti in the same area. However, if the issued fatwa is taken as a court decision, or enacted into a statutory regulation by the government that has the authority to do so, then the fatwa becomes a decision that has legal force and is binding (Dosen et al., 2019; Fikri, 1997).

Referring to the types and hierarchies of statutory regulations in Law Number 12 of 2011 concerning the Formation of Legislation, the position of the MUI Fatwa is not a type of statutory regulation that has binding legal force.

MUI fatwas are only binding and obeyed by Muslims who feel they have a bond with the MUI itself. The MUI fatwa does not have the legality to force all Muslims to obey it.

Article 1 point 2 of Law Number 12 of 2011 concerning the Formation of Legislation explains that Legislation is a written regulation that contains generally binding legal norms and is formed or determined by state institutions or authorized officials through the procedures stipulated in the Legislation (Silfiah, 2020).

Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, the type and hierarchy of Legislation consists of:

1. The 1945 Constitution of the Republic of Indonesia;
2. Decree of the People's Consultative Assembly;
3. Laws/Government Regulations in Lieu of Laws;
4. Government regulations;
5. Presidential decree;
6. Provincial Regulation; And
7. District/City Regional Regulations

Article 8 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, types of Legislation other than those mentioned above, includes regulations stipulated by:

1. the People's Consultative Assembly (MPR);
2. the People's Representative Council (DPR);
3. Regional Representative Council (DPD);
4. Supreme Court (MA);
5. Constitutional Court (MK);
6. The Supreme Audit Agency (BPK);

7. Judicial Commission (KY);
8. Bank Indonesia (BI);
9. Minister;
10. bodies, institutions, or commissions of the same level established by law or the government by order of law;
11. Provincial Regional People's Representative Council;
12. Governor;
13. Regency/City Regional People's Representative Council;
14. Regent/Mayor;
15. Village Head or equivalent.

Referring to the types and hierarchies as referred to in Law Number 12 of 2011 concerning the Formation of Legislation above, the position of the MUI Fatwa is not a type of statutory regulation that has binding legal force.

However, according to Moh. Mahfud MD said that from a constitutional and legal point of view, MUI Fatwas are not binding and cannot be forced, from an abstract regulatory point of view, a new fatwa can be binding if it has been given a certain legal form by an authorized institution, for example, made into a law or regional regulation so that be positive law. That there are Muslims who want to implement the fatwa as a personal religious awareness, not as a legal obligation.

CONCLUSION

The existence of the Fatwa of the Indonesian Ulama Council has become the most important part of the national legal system within the framework of the Unitary State of the Republic of Indonesia which is based on the first Pancasila precepts namely Belief in One Almighty God and one of its living laws is Islamic law. However, the competency of the fatwa has not received recognition from Muslims as a whole and even the MUI fatwa is still being debated because they have different views on the substance and competence of the fatwa. On the one hand, a fatwa is considered only as advice or advice that is not binding in nature, but on the other hand, a fatwa can become a regulation, if the fatwa is adopted into a statutory regulation with the aim of enriching the treasury of positive law in Indonesia.

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