

# **The Significance Of Ijtihad and Fatwa Methods in The Development Of Islamic Law In Indonesia**

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## **ABSTRACT**

This article discusses the role of fatwas in the development of Islamic law, especially in Indonesia, which is institutionally represented by the Indonesian Ulema Council. The Qur'an and the Sunnah as the main sources of Islamic law are limited in terms of quantity, while the legal problems that arise in people's lives are increasingly complex and unlimited. To deal with various complex and novel problems, the legal requirements of which are sometimes not clearly stated in the Qur'an and the Sunnah, the application of ijtihad is absolutely necessary. One of the reasons for the formation of the Indonesian Ulema Council (MUI) was to face and respond to situations like this. As an Islamic institution that has the authority to issue fatwas, the MUI has an important position in the development of Islamic law in Indonesia. Therefore, the methods applied by the MUI in carrying out ijtihad and issuing fatwas related to various legal problems faced in society also have high urgency. This paper attempts to explore the ijtihad method used by the MUI in carrying out ijtihad and issuing fatwas. By using a qualitative approach, this research found that the MUI ijtihad method uses three approaches: the Nash Qath'i approach, the Qawli approach, and the Manhaji approach, which are based on the context.

**Keywords:** Fatwa, Ijtihad, Islamic Law, Indonesia.

## **Introduction**

Progress in the fields of science and technology and successful development In this modern era, it has penetrated all aspects of human life, which in reality not only brings various conveniences, happiness, and

pleasure but also raises a number of problems. New activities that some were unaware of or never even imagined have now become a reality. On the other hand, the awareness and diversity of Muslims in the world in the last decade have flourished and increased. As a logical consequence, every time a problem, discovery, or new activity arises as a product of this progress, the people always wonder what position this has in the views and teachings of Islamic law.

As we all know, Islam is a religion that is flexible and supple in maintaining the various goals of its sharia (Maqasid al-Syari'ah). One element of the flexibility of Islamic teachings is fatwa. Fatwa literally means advice or answers to questions related to the law. Meanwhile, according to ushul fiqh scholars, a fatwa is defined as an opinion expressed that is not binding in nature. Fatwa, which is the product of ijtihad carried out by ulamas, has a very urgent role in the development of Islamic law. As an effort to develop Islamic law, ijtihad not only requires a systematic methodology that has solid Islamic roots but also requires a more firm and consistent theoretical basis. This is intended so that the legal products produced are truly comprehensive and develop consistently.<sup>1</sup>

It has become a general awareness that leaving problems without answers and leaving people confused cannot be justified, both in terms of faith and sharia. Therefore, the ulama are required to immediately provide answers and try to eliminate the people's reservations about the certainty of Islamic teachings regarding the problems they face. Likewise, anything that hinders the process of responding to a fatwa should be resolved.

The position of the Qur'an as the first source of Islamic law is limited. As mentioned by several researchers, in the Qur'an, the number of verses that talk about Sharia law, both in the areas of worship and mu'amalah, is no more than 700, and even then, only around 200 verses discuss family law issues, law inheritance, mu'amalah civil law, and criminal law. Likewise, the Sunnah, which is the second source of Islamic law, also has a limited number. There are scholars who are of the opinion that the hadiths regarding Islamic law number no more than 3000; some even say there are only 1200 hadiths. The limited number of verses in the Qur'an and The Sunnah that concern legal issues is inversely proportional to the problems of life, which continue

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<sup>1</sup> Chamim Thohari, Hudzaifah Fawwaz, and Ismi Swadjaja, "The Ijtihad Construction of Islamic Law Based on The Maqashid Al-Syari'ah Approach in The Indonesian Context", *Prophetic Law Review* 4, no. ue 2 (December 2022): 196–97.

to change and are unlimited in number. In other words, religious texts are very limited, while problems in life always arise and are unlimited.<sup>2</sup>

In overcoming the unlimited problems of life, Islam has provided space for Muslims to carry out *ijtihad*. *Ijtihad* is an attempt to resolve life problems that are not clearly stated in the Qur'an and the Sunnah. In carrying out *ijtihad*, there are many methods used by the ulama. However, basically, it has the same goal, namely, realizing *Maqasid al-Syari'ah*.

Indonesia is a pluralistic country; of course there is diversity within it, so of course new problems continue to emerge whose laws are not contained in either the Qur'an or the Sunnah. To overcome and respond to problems that emerged in Indonesia, Islamic scholars and Islamic law experts in Indonesia established an organizational body, which is currently known as the Indonesian Ulema Council (MUI).<sup>3</sup>

As a fatwa institution, of course, issuing and determining fatwas requires an *ijtihad* method agreed upon by the ulama involved in it. This paper seeks to contribute to the ongoing dialogue surrounding the development and practice of Islamic law in Indonesia by engaging with the place of MUI fatwas within the wider scholarly discourse. While the literature on Islamic law recognizes fatwas as a pivotal determinant in the trajectory of the legal decisions, very limited work has been done regarding the process through which MUI issues the fatwa. This study offers a detailed analysis of the *Ijtihad* methods adopted by the MUI, emphasizing the distinct approaches of *Nash Qath'i*, *Qawli*, and *Manhaji*. By situating this research within the current academic discussions, the author seeks to provide clarity on how these methodologies address contemporary legal challenges, thereby enhancing the understanding of MUI's adaptive strategies. This contributes to a more nuanced perspective on the intersection of traditional Islamic jurisprudence and modern legal issues in Indonesia. So based on this, in this paper, the researcher will examine the urgency, position, and methods of *ijtihad* in fatwas and their relationship to the development of Islamic law in Indonesia.

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<sup>2</sup> Muhyiddin, "Dasar-dasar Perumusan Hukum Islam (Analisis Metodologis terhadap Perumusan *Maqasid al-Syariah al-Shatibi*)", *Diponegoro Private Law Review* 3, no. 1 (October 2018): 356.

<sup>3</sup> Jamaa, "Fatwas of The Indonesian Council of Ulama and Its Contributions to the Development of Contemporary Islamic Law in Indonesia", *Indonesian Journal of Islam and Muslim Societies* 8, Number 1 (June 2018): 31–33.

## **Research Methods**

This research is library research with a qualitative approach, which aims to explain the urgency, position, and method of *ijtihad* used by the Indonesian Ulema Council in providing legal fatwas on various problems faced by society, as well as examine the role of official fatwa councils in Indonesia in the development of Islamic law in Indonesia. The article utilizes a variety of sources to support its analysis of the *ijtihad* methods employed by the Majelis Ulama Indonesia (MUI). Primary sources include official MUI fatwas and publications, which provide direct insights into the council's methodologies and reasoning. Secondary sources will include scholarly articles and books and other reports on Islamic law and fatwa, which would provide contextual understanding and place the MUI's practices within the wider discourse of Islamic jurisprudence.

It further relies on legal texts and commentaries to show the principles of *ijtihad* that underlie MUI's approaches. This wide-ranging reliance on sources is in service of the rigor and depth of the article's analysis. The data analysis in this study used three stages, namely description, explaining the main points of *ijtihad*, and fatwa. The second is a discussion of the research focus, and the third is an analysis of the collected data, which the researcher then takes and draws conclusions from the discussion that has been presented systematically.

## **Discussion and Result**

### **Ijtihad And Fatwa In Islamic Law Tradition**

*Ijtihad* and fatwa have a very strong relationship because a fatwa is an answer to a *mustafti*'s question to a *mufti* regarding matters that have not been found in the Qur'an and Hadith. Therefore, fatwa and *ijtihad* contain the possibility of right or wrong. This depends on several things, such as the *mufti*'s educational background, the information conveyed by the *mustafti*, the *mufti*'s *tasawwur* regarding the problems asked by the *mustafti* and also the *ijtihad* method used by the *mufti*.

### **The Comprehension of Fatwa and Ijtihad**

Lexically, the term *Ijtihad* comes from the word *al-Juhd*, which means strength, ability, or power. Or it can also be interpreted as *al-*

jahd, which can be interpreted as hardship or difficulty. Meanwhile, if the word *ijtihad* is seen based on its linguistic meaning, it means *badzl al-wus' wa al-majhud*, namely an effort to mobilize ability and power, or an effort carried out with all the power and ability in complex activities that are difficult to implement.<sup>4</sup> The definition of *ijtihad*, according to the term, is an effort or endeavor by devoting all one's abilities to gaining knowledge about the laws of Sharia, which is obtained through detailed arguments based on special or certain methods to get it.<sup>5</sup>

In the Indonesian dictionary, the word *fatwa* is defined as a decision, answer, or opinion of a *mufti* in answering a problem. However, there is also another meaning of the word *fatwa*, namely advice, advice from a pious person, or a good lesson.<sup>6</sup> In Arabic, the word *fatwa* is *bayyana*, which means explaining.<sup>7</sup> Another form of the word *fatwa* is *futya*, which refers to the word *tabyin al-Musykil min al-ahkam* (explanation of difficult matters regarding the law). The origin of the word *al-futya* is *al-fata*, which means teenager, which reflects young people who have the strength to overcome difficult things. Apart from that, there is another layer of words, namely *al-tafatti*, which refers to the meaning of dispute.<sup>8</sup> The definition of a *fatwa* based on Sharia' is an explanation of a problem that functions as an answer to a question, either individually or collectively.<sup>9</sup> Definitively, basically, there is no difference between a *fatwa* and a decision because both, in this context, are the result of the *ijtihad* of a religious institution.<sup>10</sup>

*Ifta'* (effort to give a *fatwa*) is a synonym for the word *ijtihad*, but the difference between the two is that the first word (*Ifta'*) is more specific than the second (*ijtihad*). *Ijtihad* is an *istinbath* (formulation) of general legal rules, whether the case has occurred or not. Meanwhile, the *fatwa* concerns existing cases where the *mufti* provides legal

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<sup>4</sup> Nasrun Rusli, *Konsep Ijtihad Al-Syaukani* (Ciputat: PT Logos Wacana Ilmu, 1999), 73.

<sup>5</sup> Ghazali, "Abu Hamid bin Muhammad bin Muhammad Al-Ghazali, t.t," in *Al-Mustasyfa min Ilmi Al-Ushul* (Beirut: Daar al-Fikr al-Mu'ashir, n.d.), 342.

<sup>6</sup> Departemen Pendidikan Nasional, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, 2003), 314.

<sup>7</sup> Ibnu Mandzur, *Lisan Al-Arab, Juz IX* (Kairo: Daar al-Hadits, 2003), 2.

<sup>8</sup> Fadlil Munawar Manshur, "Tasawuf dan Sastra Tasawuf dalam Kehidupan Pesantren," *Jurnal Humaniora No.1 11* (April 1999): 103.

<sup>9</sup> Yusuf Al-Qardhawi Qardhawi, *Fatwa Antara Ketelitian Dan Kecerobohan. Terjemah As'ad Yasin* (Jakarta: Gema Insani Press, 1997), 5.

<sup>10</sup> Moh Mukri, *Rekonstruksi Hukum Islam Indonesia* (Yogyakarta: IdeaPress, 2014), 192.

provisions that are based on a person's knowledge of the mufti.<sup>11</sup> According to Nasution, a fatwa is a response from ulama to questions or situations that exist and arise that are caused by changes that occur in society due to the revolution in human lifestyle patterns and styles or developments in technology that are up to date.<sup>12</sup>

### **The Role of Fatwas and Ijtihad**

The main function of ijtihad is the exploration and search for knowledge of Sharia law. Ijtihad is an obligation to respond to the dynamics of human life, which continues to develop endlessly. This causes the emergence of various new problems in society that require legal certainty. So Ijtihad becomes a scientific tool needed to determine laws in various aspects of new life, in accordance with the Islamic dimension.<sup>13</sup>

Ijtihad is the goal of renewal in Islamic thought as well as the main factor in preventing the emergence of liberalism, namely the desire to break away from the bonds of madhhab because it is unable to face change. The implementation of ijtihad is an effort to ground Islamic teachings from normative-theoretical postulates to an empirical-practical level that is ready for use. On the other hand, ijtihad is an effort to find the relevance of the application of Islamic law in accordance with its basic substance in human life, which is always changing.

The main function of a Fatwa is to provide answers to problems that arise. The function of a fatwa in this modern era is to serve as a guide in explaining the provisions of Islamic law relating to the living conditions of Muslims. In classical times, a mufti gave a fatwa personally as a response and answer to a question asked. Because a fatwa is an answer and response to problems that occur in society, it is always dynamic in its delivery, even though it is not necessarily appropriate in terms of content.<sup>14</sup>

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<sup>11</sup> Wahbah Zuhaili, *Usbul Fiqh Al-Islami* (Beirut: Daar al-Fikr al-Mu'ashir, 1986), 1156.

<sup>12</sup> Harun Nasution, *Pembaharuan Dalam Islam, Sejarah Pemikiran Dan Gerakan* (Jakarta: Bulan Bintang, 1975), 11–12.

<sup>13</sup> Abd Wafi Has, "Ijtihad sebagai Alat Pemecah Masalah Umat", *Episteme* 8, no. 1 (June 2013): 95–97.

<sup>14</sup> Erfan Riada and Januari-Juni Tahun IV, "Kedudukan Fatwa Ditinjau dari Hukum Islam dan Hukum Positif (Analisis Yuridis Normatif)", *Ulumuddin* IV (2010): 469–70.

## Various Forms of Ijtihad and Fatwa

In general, the forms of ijtihad and fatwa are divided into two categories, namely: first, ijtihad and fatwa are viewed from the perspective of their origin. Second, ijtihad is seen based on the birth process. As for ijtihad and fatwa, seen from the perspective of their origin, they are divided into two parts.<sup>15</sup>

First, Ijtihad Fardi, which is carried out independently by a person called a mujtahid, The methods and procedures for determining the law and the process for making decisions are carried out independently. Such as fatwas among the schools of jurisprudence, the fatwa of Shaykh Yusuf al-Qardhawi, the fatwa of Shaykh Ibn Taimiyah, Shaykh Mahmud Syaltut, and so forth.<sup>16</sup>

Second is Ijtihad Jama'i (collective), which is carried out not individually but collectively by groups of mujtahids with different expertise in various fields of science. Such as the MUI, the Muhammadiyah Tarjih Council, the PERSIS Hisbah Council, and the NU Lajnah Bahsul Masail.

Then, when viewed from the perspective of implementation and process, fatwa and ijtihad are divided into two, namely:

First, Ijtihad Intiqai'i is a selection of one of the strongest opinions in the legacy of Islamic jurisprudence, which contains fatwas and Islamic laws.<sup>17</sup> In Ushul Fiqh terms, this intiqai'i method is called the tarjih method, namely selecting or prioritizing the strongest opinion from the existing opinions. According to Qardhawi, there are many tarjih rules, some of which are: First, the opinion taken must be in accordance with contemporary living conditions. Second, the opinion should depict gentleness and compassion for humans. Third, do not shy away from the convenience of the provisions of Islamic law. Fourth, prioritizing the realization of the objectives of the Shari'ah, namely protecting human benefit and preventing harm from them.<sup>18</sup>

Second, Ijtihad Insha'i is the drawing of new legal conclusions about a problem where the problem has never occurred. According to al-Qardhawi, this Insha'i ijtihad activity is a necessity to find solutions to problems that have just emerged and to become literacy in the

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<sup>15</sup> M.Cholil Nafis, *Teori Hukum Ekonomi Syari'ah* (Jakarta: UI-Press, 2011), 54.

<sup>16</sup> Asafri Jaya, *Konsep Maqashid Al-Syari'ah Menurut Syatibi* (Jakarta: Raja Grafindo Persada, 1996), 141.

<sup>17</sup> Qardhawi, *Fatwa Antara Ketelitian Dan Kecerobohan. Terjemah As'ad Yasin*, 24.

<sup>18</sup> Qardhawi, 25.

development of Islamic law because of the certainty that at any time it will give rise to very varied problems, as well as with the current conditions and times, where the problems are clearly different from the problems of the past.<sup>19</sup>

### **The Position of Ijtihad and Fatwa in Islam**

In general, the results of the ulama's ijtihad can be differentiated based on four categories, namely: 1) concerning jurisprudence; 2) regarding the judge's decision in the religious courts; 3) legislation in Islamic countries; and 4) ulema fatwa.<sup>20</sup> Basically, the ulama state that fatwa does not have a substantial difference from ijtihad because fatwa itself is one of the results of ijtihad carried out by the ulama. However, the difference between ijtihad and fatwa is that fatwa is more specific than ijtihad. As mentioned above, ijtihad is a legal istinbath activity that is carried out whether there is a problem or not. Meanwhile, the fatwa itself is carried out because of a problem or event, which a jurisprudence expert then tries to find out and determine its legal status.<sup>21</sup>

As for ifta' (effort to give a fatwa) itself, it can be used as a synonym for ijtihad.<sup>22</sup> Ijtihad is a formulation of general legal provisions, whether or not there is legal status in the case. Meanwhile, fatwas only focus on existing cases, where the mufti issues legal status based on his legal knowledge. This is different from a mujtahid, who tries to formulate a law based on the Qur'an and the Sunnah on every issue, whether requested or not by interested parties. Meanwhile, a mufti gave a fatwa because of a request regarding the problem that occurred. A mufti may give a fatwa to a mujtahid who is still alive or who has died, but he must know the method of legal istinbath, which is the basis of the mujtahid's thinking. This is as exemplified by the friends Tabiin and Ulama in the previous one.<sup>23</sup>

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<sup>19</sup> Heri Fadli Wahyudi and Fajar, "Metode Ijtihad Komisi Fatwa Majelis Ulama Indonesia dan Aplikasinya dalam Fatwa", *Cakrawala: Jurnal Studi Islam* 13, no. 2 (2018): 125–27.

<sup>20</sup> Muhammad Atho Mudzhar, *Fatwa-Fatwa Majelis Ulama Indonesia: Sebuah Studi Tentang Pemikiran Hukum Islam Di Indonesia 1975-1988* (Jakarta: INIS, 1993), 369.

<sup>21</sup> Muhammad Abu Zahroh, *Ushul Fikih* (Beirut: Dar al-Fikri al-Arabi, 1958), 401.

<sup>22</sup> Rifyal Ka'bah, *Hukum Islam di Indonesia Perspektif Muhammadiyah dan NU* (Jakarta: UMY, 1999), 212.

<sup>23</sup> Wahyudi and Fajar, "Metode Ijtihad Komisi Fatwa Majelis Ulama Indonesia dan Aplikasinya dalam Fatwa", 127.

A mufti has the position of caliph and is the heir of the prophets, so the position of the fatwa is very important. In conveying the laws of the Sharia, a mufti teaches and warns people to be aware and try to be careful. Apart from conveying what was narrated from the Prophet SAW, a mufti determines Islamic laws by analyzing and making ijtihad based on the propositions of the law, which are already available.<sup>24</sup>

## **The MUI And Its Influence On The Development Of Islamic Law In Indonesia**

### **The Essential Necessity of MUI in Indonesia**

As a religious organization, MUI has objectives as stated in the MUI basic guidelines, which were ratified in its first national deliberation (MUNAS), precisely on July 26, 1975. Article 3 states that MUI has the objective of creating a safe society based on Pancasila, the 1945 Constitution, and GBHN. Then in MUNAS II, article 3 of the MUI's basic guidelines was refined to read: "MUI aims to participate in creating a safe, peaceful, just, and prosperous society spiritually and physically that is blessed by Allah SWT in the Republic of Indonesia based on Pancasila".<sup>25</sup>

MUI has the main task of developing and guiding the people in improving the quality of their faith and practice of Islamic law in an effort to create a safe, just, and prosperous society both spiritually and physically based on Pancasila, the 1945 Constitution, and GBHN. Meanwhile, the role of the MUI in the formulation of MUNAS I in the basic guidelines of Article 4 functions as an institution that issues fatwas and advice, both to government institutions and to Muslims in matters relating to religion and national benefit, maintaining the unity of the Ummah as an institution that represents the Ummah. Islam as well as a link for harmony between religious people.<sup>26</sup>

In carrying out daily activities, this institution also forms commissions to study legal issues called fatwa commissions. Its main task as an organizer, researcher, and reviewer is to formulate fatwas and religious-related laws in society. So a fatwa is a legal alternative to

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<sup>24</sup> Qardhawi, *Fatwa Antara Ketelitian Dan Kecerobohan. Terjemah As'ad Yasin*, 13–15.

<sup>25</sup> Nafis, *Teori Hukum Ekonomi Syari'ah*, 78.

<sup>26</sup> Mudzhar, *Fatwa-Fatwa Majelis Ulama Indonesia: Sebuah Studi Tentang Pemikiran Hukum Islam di Indonesia 1975-1988*, 82.

providing answers to life's problems from a religious perspective for society or government.<sup>27</sup>

### **Ijtihad Method of the Fatwa Commission of the Indonesian Ulema Council (MUI)**

In principle, there are three methodological approaches used by the MUI Fatwa Commission in its efforts to determine fatwas, namely: the nash qath'i approach, the Qauli approach, and the Manhaji approach. The first approach is the approach applied in determining fatwas that refer directly to the Qur'an or The Sunnah if the problem being faced has been clearly mentioned by both. The nash qath'i approach used by the MUI in Cholil Nafis's view is called the Bayani approach. However, the nash qath'i approach used by the MUI fatwa institution is only limited to explaining the valid propositions of the Qur'an and The Sunnah without explaining the meaning clues to the problem being studied. It seems that the MUI, in using this approach, only looks at the text of the verse without carrying out an in-depth study of the details (instructions) of the verse itself. In other words, the qath'i text approach is very different from the Bayani approach, as has been done by the ulama in studying a verse text contained in the Qur'an.<sup>28</sup>

Of the three methods of ijtihad discussed, the Qawli approach is the one employed foremost by the MUI. In this manner, the MUI can depend upon scholarship that has already been considered, giving the organization a base upon which to decide various legal questions not specifically addressed by the Qur'an and Sunnah. For instance, the MUI has issued a fatwa on the permissibility of electronic payments and digital currencies. Through this, MUI referred to various scholarly opinions regarding modern financial practices and thereby demonstrated commitment towards treading through the complexities of modern finance without losing allegiance to traditional Islamic jurisprudence.<sup>29</sup> If the text of the Qur'an or Hadith is unequivocal—for example, the consumption of alcohol—MUI applies the Nash Qath'i

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<sup>27</sup> Mudzhar, 82.

<sup>28</sup> Moch Tolchah, "Fatwa-Fatwa Majelis Ulama Indonesia (Studi atas Pemikiran M," *Atbo Mudzhar*". *El-Banat: Jurnal Pemikiran dan Pendidikan Islam* 1, no. 2 (2011): 167–82.

<sup>29</sup> Ana Santika Inuddanis, "Implementasi Fatwa Dewan Syariah Nasional Majelis Ulama Indonesia Nomor: 116/DSN-MUI/IX/2017 Tentang Uang Elektronik (E-Money)," *At-Thasaruf: Jurnal Kajian Ekonomi dan Bisnis Syariah* 6, no. 1 (2014): 55–67.

approach and therefore issues a firm ruling based on this unequivocal text.<sup>30</sup>

The Manhaji approach, on the other hand, is applied to complex, contemporary issues that call for contextual reasoning. Such is the case with the vaccination fatwa, whereby MUI took into consideration public health implications and the protection of the community in the pandemic.<sup>31</sup> Through such approaches, MUI brilliantly leads the way for an adaptive response to the emerging legal needs within the evolution of the Indonesian Islamic community.

Apart from the MUI Fatwa Commission, this kind of approach is also used by the Muhammadiyah Tarjih Council in determining fatwas. The Muhammadiyah Tarjih Council prioritizes the authentic Qur'an and Sunnah as the main sources in its ijtihad. It's just that the Muhammadiyah Tarjih Council treats the texts of the Qur'an and the Sunnah differently from the MUI Fatwa Commission. The Muhammadiyah Tarjih Council really examines the texts of the Qur'an and the Sunnah using the Bayani (semantic) approach, namely ijtihad on the mujmal text, either because the meaning is still unclear or in certain pronunciations it means musytarak (double), mutasyabih (multiple interpretations), etc. This is the difference between Muhammadiyah and MUI, which only focus on division Nash's postulates.<sup>32</sup>

Furthermore, if it is not found in the text of the Qur'an or the Sunnah, then the legal determination is through the Manhaji and Qauli approaches. The Qauli approach is an approach in an effort to determine a fatwa by adhering to the views of madzhab imams found in leading fiqh books, which is done if the answer is sufficient to resolve and answer the existing problem. However, if the qaul is deemed unsuitable to be adhered to because it is very difficult to carry out due to changes in the illat, it will be carried out again.<sup>33</sup>

Apart from the MUI Fatwa Commission, the Qauli approach is also used by the NU Bahtsul Masail Institute in carrying out ijtihad or

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<sup>30</sup> Isnan Ansory, "Status Hukum Alkohol Perspektif Tafsir Ahkam", *Jurnal Rubul Islam* 1, no. 1 (September 2023): 18–41.

<sup>31</sup> "Hukum Penggunaan Vaksin Antrazeneca (Analisis Fatwa MUI No. Melia Rosa, "14 Tahun 2021)", *Jurnal Al-Ahkam* XIV, no. mor 1 (June 2023): 228–131.

<sup>32</sup> Diana Mutia Habibaty Habibaty, "Peranan Dewan Syariah Nasional Majelis Ulama Indonesia Terhadap Hukum Positif Indonesia", *Jurnal Legislasi Indonesia* 14, no. 4 (2007): 448–50.

<sup>33</sup> Habibaty, 448–50.

issuing fatwas. However, in its application, there is a very striking difference between the Qauli approach used by the MUI and the Qauli approach used by the NU LBM in determining a fatwa. These differences can be seen in the qaul (opinions) expressed by both of them.

In issuing fatwas, the MUI Fatwa Commission does not restrict its references to the four major Sunni madhhabs, such as Hanafi, Maliki, Shafi'i, and Hanbali alone. The commission also borrows views from outside the schools, like the Imamiyah and Dzahiriyah, and once in a while it issues collective opinions. The wider methodology is driven by the imperative to address complex modern legal issues that traditional Sunni jurisprudence has yet to fully address. This is, for example, in the case of the fatwa on organ transplantation, where MUI refers to some juristic views outside the four madhhabs. The fatwa determined that the permissibility of vaccines from non-halal sources can be collectively reasoned through the principle of necessity in any emergency situation that may occur, as happened with the COVID-19 pandemic. It also allows MUI to provide relevant fatwas that take into consideration the diversity and evolution of Indonesia's context.<sup>34</sup>

Meanwhile, the qaul (opinions) quoted by the NU LBM in determining fatwas are only limited to the opinions of the four madzhab imams; in fact, the NU LBM's expression of opinions mostly uses opinions contained in books written by followers of the Shafi'i madzhab, such as the books *Lam 'u al-Jawami'*, *al-Mushtasyfa*, *Hujjah al-Wushul*, *Waraqat*, *al-Asybah wan al-Nazha'ir*, and other books. So, according to the author, it would not be an exaggeration to say that the qauli approach used by the NU LBM is said to be a qauli al-syafi'i (syafi'i centrist) approach because every time a fatwa is issued, the opinions cited by the NU LBM are dominated by the opinions of the followers of Imam Syafi'i, like Imam Nawawi, Rafi'i, etc.<sup>35</sup>

The Manhaji approach is a way of resolving legal problems based on the way of thinking and rules for establishing a law initiated by madzhab imams. The Manhaji approach: According to Abdul Muchith Muzadi, as quoted by Ahmad Muhtadi Anshor in his book, this madzhab system is a way to pass on the teachings of the Qur'an and also the

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<sup>34</sup> Wahyudi and Fajar, "Metode Ijtihad Komisi Fatwa Majelis Ulama Indonesia dan Aplikasinya dalam Fatwa", 120–33.

<sup>35</sup> Aburrahman Kasdi, "Maqasyid Syariah Perspektif Pemikiran Imam Syatibi dalam Kitab Al-Muwafaqat", *Yudisia* 5, no. 1 (June 2014): 46–62.

Sunnah for the sake of maintaining religious straightness and purity. This is also because the content of the teachings of the Qur'an and the Sunnah must be understood and interpreted using a pattern of understanding and methods that can be accounted for.<sup>36</sup>

The manhaji approach is an approach that is quite popular in Indonesia. In the process of determining a fatwa, it is not just the MUI that uses this approach; it is also used by the Muhammadiyah Tarjih Council and also by the Bahtsul Masail institution. NU also uses this approach in carrying out ijthad or determining fatwas. In the Muhammadiyah Tarjih Council, the Manhaji approach is used only if the Nash Qoth'i and Qouli methods are unable to provide satisfactory answers to the problems being studied or are not appropriate to the context and do not bring benefits. Likewise in the NU Bahtsul Masail Institute. In LBM NU, the manhaj approach is used if no opinion has been found and it is impossible to do ilhaq. The manhaji approach used by the MUI is not much different from that used by the Tarjih Muhamadiyah Council and LBM NU.<sup>37</sup>

## **MUI Ijthad Procedures and the Fatwa Issuance Process**

A fatwa is an answer to a difficult question or an answer to a problem that is not yet found textually in the Qur'an and the Sunnah.<sup>38</sup> Questions that do not yet have textual answers in the Qur'an and Hadith will ultimately encourage the mufti to carry out ijthad. The result of the ijthad conveyed by the mufti to the mustafti is called a fatwa.

The current work, therefore, focuses on the DSN MUI because it holds a privileged position as a collective fatwa institution under the MUI and is composed of members from various Islamic organizations and specialists in the field of economics. Specializing in issuing fatwas on mu'amalah affairs, which are Islamic commercial transactions, the DSN MUI has set standards on carrying out ijthad with regard to contemporary economic problems. With the accumulated experience and specialized attention to Islamic financial jurisprudence, it is a vital

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<sup>36</sup> Kasdi, 46–62.

<sup>37</sup> Habibaty, "Peranan Dewan Syariah Nasional Majelis Ulama Indonesia Terhadap Hukum Positif Indonesia", 450.

<sup>38</sup> Ibrahim Mustafa Mustafa and Al-Mu'jam Al-Wasith, vol. II (Cairo: Dar al-Da'wah, n.d.), 673.

institution in setting guidelines in this fast-changing environment of Islamic finance; hence, the reason for its selection for focal attention in this study.<sup>39</sup>

The process that must be followed for the birth of a fatwa from the MUI DSN to its publication goes through the following stages:

1. Request a fatwa from DSN. This can only be done by institutions, whether Sharia Financial Institutions (LKS), Sharia Business Institutions (LBS), other Sharia Economic Institutions, or government institutions such as Bank Indonesia, the Financial Services Authority, the Indonesian Stock Exchange, or ministries. DSN does not accept inquiries from individuals. All questions must be submitted in writing on business days and hours.<sup>40</sup>
2. Discussion and *istibyan* towards *Mustafti*. Discussion and *istibyan* are carried out by the DSN before carrying out *ijtihad* and issuing a fatwa. This is so that the mufti (DSN) gets good *tashawwur* regarding the issue requested by the fatwa. Apart from DSN and *mustafti*, discussions and *istibyan* are usually also attended by practitioners.<sup>41</sup>
3. Preparation of a problem checklist (DIM). The Issue List (DIM) is the list of points that must be answered in the fatwa so that the fatwa to be issued is complete and comprehensive, easy to understand, and easy to implement without any friction between sharia and positive law.
4. Literature review. After filling in the DIM, the MUI DSN conducted a literature review by referring to classical and modern fiqh books, also reviewing fatwas related to matters that would be passed on by previous ulama, if any, both national and international fatwas, and of course a study of existing DSN fatwas. A literature review was also carried out regarding positive legal aspects regarding the issues studied.
5. Preparation of a draft fatwa. The fifth flow is the drafting of the

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<sup>39</sup> Ichwan Ahnaz Alamudi, Sulaiman Kurdi, and Ahmadi Hasan, "Kedudukan Fatwa Dewan Syariah Nasional dalam Kerangka Politik Hukum Nasional," *HES: Jurnal Hukum Ekonomi Syariah* 7, no. 1 (April 2024): 1–16.

<sup>40</sup> Muhammad Khalid Masud, "The Significance of *Istiftā'* in the Fatwā Discourse," *Journal Islamic Studies* 48, no. 3 (2009): 341–66.

<sup>41</sup> Ibnu Najjar Hanbali and Abu al-Baqa Muhammad bin Ahmad al-Hanbali Taqiyuddin, *Sharh al-Kawkab al-Munir*, Cet. ed. editor Muhammad Al-Zuhaily. II (Kairo: Al-Ubaikan, 1997), 50.

- fatwa by the drafting team after going through the previous process. The draft fatwa will then be submitted to the DSN MUI Daily Management Body (BPH).
6. Submission of a draft fatwa. Submission of the draft fatwa is made to the DSN-MUI Daily Management Body (BPH) to ask for suggestions and input either in writing or verbally in the BPH meeting forum, which is held regularly at least once a week. To further enrich references and minimize errors in making *ijtihad* to issue a fatwa, the fatwa draft is usually also discussed together with the relevant authorities to ask for input and suggestions regarding the substance of the fatwa draft.
  7. Improvements to the fatwa draft. All input and suggestions from various parties, both BPH DSN MUI, authorities, practitioners, and others, were accommodated and then discussed internally by the DSN-MUI team to then make improvements to the fatwa draft. This is to avoid fatwas that may conflict with rules or positive laws, because the basic idea is that positive laws that do not conflict with sharia and are made for the benefit of society must be obeyed by citizens. Therefore, as far as possible, fatwa efforts are made not to conflict with statutory regulations, but DSN must remain objective in assessing the applicable regulations.
  8. Approving the fatwa's draft. After the draft fatwa has been revised, the next stage is the stage of approval of the draft fatwa that has been prepared. If it is deemed appropriate, the BPH plenary meeting will approve the draft fatwa. Meanwhile, if it is still deemed necessary to make improvements, the fatwa draft will be revised first with several suggestions or input from BPH plenary meeting participants.
  9. The Plenary Session of Fatwa Ratification. At this stage, the draft fatwa that has been discussed and agreed upon at the meeting of BPH is presented for further discussion and ratification. The attendants at the plenary session are a diverse pool comprising Ulama representing all major Islamic organizations in Indonesia, experts in sharia economics and finance, representation from Indonesia's financial, business, and economic authorities, and members of the BPH DSN-MUI. The session shall discuss and agree on the collective fatwa in order that it reflects a wide spectrum of competencies and insights within the Islamic and

- economic communities of Indonesia.
10. Improvements to the draft and publication of the fatwa. The improvements intended in this plot are improvements to the fatwa draft after the plenary session so that the fatwa text is ready for publication. After the plenary session to determine the fatwa, if there are notes to improve the fatwa, then the next stage is to improve the fatwa draft after the plenary session by the DSN-MUI fatwa team.<sup>42</sup>

## Conclusion

Fatwa is a product of the thoughts of Mujtahids to answer various problems that arise in society. The development of Islamic law from time to time has always been continuous until the current contemporary era, where Islamic law has always been a dynamic law without abandoning its main sources, namely the Qur'an and the Sunnah, although differences in the respective ijthad products often occur.

The MUI Ijthad method used in determining its fatwas includes three approaches, namely: first, the Nash Qath'i approach. However, the nash qath'i approach used by the MUI in issuing fatwas is limited to explaining the arguments from the verses of the Qur'an and the Hadith of the Prophet without explaining the meaning (dilalah) of the problem being studied. Second is the Qauli approach. In determining fatwas, the MUI Fatwa Commission not only quotes the opinions of the four madzhab imams, but the MUI sometimes also quotes opinions from outside the four madzhab imams and their followers, such as the Imamiyah and Dzahiriyah madzhabs. Sometimes the MUI even expresses collective opinions. Third, Manhaji's approach is used only if the Nash Qath'i and Qauli methods are unable to provide a satisfactory answer to the problem being studied.

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<sup>42</sup> Muhammad Sofwan Jauhari Jauhari, Isn'an Ansori, and Abdul Ghoni, "Metode Ijthad dan Alur Penerbitan Fatwa Dewan Syariah Nasional (DSN) MUI," *Kordinat XXII*, no. 1 (2023): 18–19.

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